DOCUMENT RESUME

ED 063 657

EA 004 338

AUTHOR	Neal, Richard G.
TITLE	Grievance Procedures and Grievance Arbitration in Public Education.
INSTITUTION	Educational Service Bureau, Inc., Washington, D.C.
PUB DATE	71
NOTE	80p.
AVAILABLE FROM	Educational Service Bureau, Inc., 1835 "K" Street, N.W., Washington, D.C. 20006 ($8.95)
EDRS PRICE	MF-$0.65 HC Not Available from EDRS.
DESCRIPTORS	Administrator Role; *Arbitration; Board of Education Policy; *Collective Negotiation; *Employment Problems; *Grievance Procedures; *Labor Legislation; Negotiation Impasses; Principals; State Laws; Teacher Associations

ABSTRACT

In the first section on grievance procedures, this report gives important suggestions to administrators and teachers, discusses the roles of administrators and chapter chairmen in grievance processing, and provides a one-page grievance formula. In the second section on grievance arbitration, the report (1) discusses the rationale for binding arbitration and presents arguments against its use, (2) provides sample State laws on grievance procedures, (3) discusses the enforceability in court of negotiated agreements, (4) describes the role of the American Arbitration Society in grievance arbitration, and (5) provides examples of arbitration cases. An appendix contains a sample grievance procedure. (JF)

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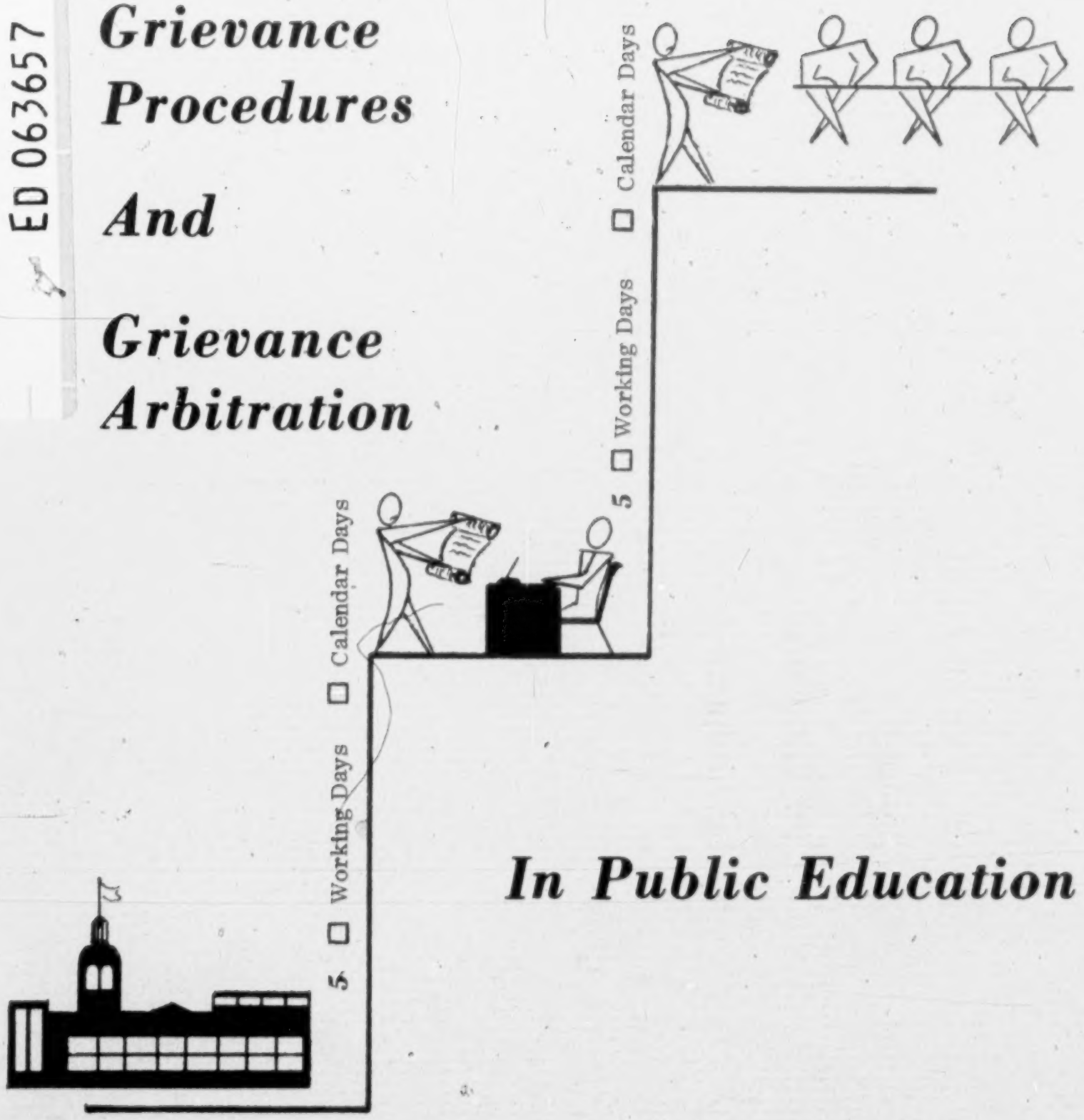
Grievance Procedures And Grievance Arbitration In Public Education



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Grievance Procedures And Grievance Arbitration In Public Education

By Richard G. Neal

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Part I

Grievance Procedures

1

Background

The origin of organized and written grievance procedures is found in the beginnings of collective bargaining in the private sector of labor-management relationships. In the beginning, contracts were acquired by labor through collective bargaining. After the contract had been negotiated, there were frequent accusations of bad faith, accusations that management was not living up to the requirements of the contract.

These complaints became known as grievances. As time passed, these grievances grew to be so numerous and routine that it became necessary to include in labor-management contracts written procedures for handling questions regarding the implementation of the contract. These written procedures became known as "grievance procedures". Samples of such procedures can be found in almost any labor-management contract. Over the years some have grown quite long and complex.

Since collective bargaining has not been present generally in public school personnel management, grievance procedures developed differently. By and large, grievance procedures in public schools have been "handed down" by top level administration.

These procedures have generally been written from the administrator's point of view. They have been in most instances quite short and uncomplicated, providing little more than for the teacher to complain to progressively higher levels of administration, beginning with his immediate supervisor and ending with the school board.

The extent to which grievance procedures are developed in the United States varies considerably. There seem to be about four levels of development:

1. Those school systems where there are neither written personnel policies nor collective bargaining agreements, and consequently, no formal grievance procedures at all. For the most part such situations are found in small rural areas. If grievances are aired at all in such communities, it is usually done very informally.

2. Then there are the districts which have written personnel policies (these policies vary greatly in content, thoroughness, and quality) but no collective agreement and no provision for grievance procedures. Here, too, grievances are handled informally in most cases.

3. Third, there are the districts which have no collective bargaining contracts, but do have written personnel policies which include some provision for grievance procedures. The quality and thoroughness of grievance procedures in such situations vary greatly.

4. Last, there are the districts which have both written personnel policies and a collective agreement in which is included a grievance procedure. This last category is the most prevalent and is growing steadily. Before long, most systems will have negotiated contracts between the teachers and the board with detailed grievance procedures included.

Personnel management today is highly complex. There are bound to be misunderstandings in complicated contracts. When misunderstandings arise, there must be a method for adjudication; otherwise, the employee and the employer would never achieve good working relationships. Unresolved differences hinder efficient operation.

The very essence of a grievance procedure is to provide an opportunity for a teacher, without jeopardizing his position, to express a complaint and receive an honest hearing.

Examples of grievances

Here are some examples of the types of teacher grievances which can grow out of misinterpretation or misapplication of a negotiated contract:

1. Teacher evaluation: "The contract says, 'Teachers shall be observed regularly by the principal.' Why, he (the principal) hasn't been in my room in the last two years. How can he evaluate me?"

2. Salaries and fringe benefits: "The contract says, 'Teachers shall be given credit on the salary scale for outside experience on an equitable basis,' but new teachers get more money for their outside experience than we who have been in the school system for a long time."

3. Facilities, equipment and supplies: "The contract says, 'Teachers shall be provided audio-visual equipment on request, when available.' I seldom get a movie projector delivered on time. If it does arrive on time it's broken or the film is missing. If I'm fortunate enough to get a working projector and film together, then I'm in a room with broken or no blackout curtains. And even if everything is working okay, the principal makes a P.A. announcement in the middle of the film, and the contract says the principal isn't supposed to make P.A. announcements during class."

4. Promotion: "The contract says, 'Openings in administrative positions are to be posted.' Everyone knows the position is filled even before the positions are advertised."

5. Working conditions: "The contract says we are to be in our classrooms 15 minutes before school opens. What right does my principal have to assign me to checking rest rooms for smokers?"

6. Teaching load: "The contract says we English teachers are to teach only four periods per day with no more than 25 students per class. The principal has no right to give me a study hall assignment also."

The above examples are typical of teacher grievances. Some reasonable procedure must be provided for such complaints to be adjudicated.

Advantages of grievance procedure

Despite the good efforts of the school board and its administrative staff to adhere to the contents of the negotiated agreement, grievances will arise

inevitably. The causes for such grievances are several. (1) Teachers will misunderstand the terms of the agreement and claim a grievance when in fact there is none. (2) Administrators will misinterpret the meaning of the agreement and misapply its terms. (3) An error may have been written into the contract, causing misunderstanding. (4) The grievance machinery may be used for ulterior motives. (5) A given grievance may be lodged as a test case in order to strengthen (from the teachers' point of view) future agreements.

As a matter of routine the board can expect grievances to be lodged. Therefore, the board should make every effort to assure that the grievance procedure which they establish contributes to constructive personnel relationships and ultimately to a better school system. Such procedures have several advantages for school managers:

1. Employees are assured unobstructed communication, free of fear, with those who have the power to correct an alleged wrong. Such open communication builds better morale, since employees are provided with the security that alleged violations of their rights under the agreement will be adjudicated fairly. Such a right is based upon our legal heritage which guarantees the right to litigation free from fear of intimidation and reprisal.

2. The scope of subjects upon which a grievance may be claimed is materially reduced. Since the grievance procedure should cover only claimed violations of the agreement, any subject not covered in the collective agreement may not be processed under the grievance procedure. Grievances concerning matters outside the content of the agreement may be handled with considerable managerial freedom.

3. The unencumbered discussion and adjudication of grievances provides a series of precedents which are valuable in the strengthening of future agreements.

4. Sound grievance procedures provide for a fair and peaceful means of adjudicating alleged complaints. Without such procedures, teachers would be forced to resort to threatening tactics such as strikes. After all, one of the purposes of collective agreements is to achieve employment stability.

5. Good grievance procedures help weed out teachers' gripes about their salaries, working conditions and terms of employment. Under collective negotiations these topics are negotiable. If a teacher has a complaint in these areas, he should introduce the subject into negotiations, If the agreement has not been adhered to, then the teacher may legitimately lodge a grievance. There is less need for him to undermine the morale of others by complaining in the teachers' lounge.

6. Constructive grievance procedures encourage problem solving at the lowest administrative levels, thus avoiding the bypassing of normal administrative channels. It is at this lowest level, i.e., the immediate supervisor, that approximately 90% of grievances originate and are solved.

Grievance definition

The decision regarding what constitutes a grievance is a most crucial decision in negotiations. Most teacher organizations have been instructed to define a grievance as "a claim by a teacher that he has been harmed because of treatment contrary to any existing policy, rule, regulation, practice, or custom." Such a definition would be intolerable, from the board's point of view, since this could mean that any teacher could process through the negotiated grievance procedure any complaint on any subject. Such a definition would permit grievances to be lodged on changes in grading practices, changes in curriculum, location of school buildings, and a host of other topics clearly not grievable or negotiable.

Suppose the above definition of grievance was agreed to by a board, and subsequently this same board agreed to binding arbitration of grievances. This would mean that all unresolved disputes (it's the unresolved ones that are crucial) on any subject would go to binding arbitration by an outside party. This would relieve the school board of practically all of its authority. Carried to an extreme, it would mean that any time the school board changed any policy, rule, regulation, practice, or custom, which the teachers didn't like, the issue would be resolved by persons other than the school board.

The proper definition of a grievance (under collective negotiations) is "an allegation by a person, or persons, in the unit that their rights under the negotiated agreement have been violated." This definition restricts grievance only to matters pertaining to the negotiated agreement. Grievances regarding matters outside the scope of the agreement are handled as they have been in the past.

This definition restricts grievances to the same limited scope as specified in the law, i.e., "salary, wages, hours, and other working conditions." A negotiated grievance procedure should not be used to process grievances on matters beyond the scope of negotiable topics under the state law.

This type of grievance definition is a most necessary concomitant of any good employee-employer collective agreement, since it provides for the democratic adjudication of any accusation of alleged injustices arising from the implementation of the agreement which was the result of joint effort.

Black's Law Dictionary defines a grievance as "an injury, injustice or wrong which gives ground for complaint because it is unjust and oppressive."

Another definition popular among teacher unions is: "A claim by any teacher or group of teachers in the negotiating unit based upon 'any event' or 'condition' affecting their welfare and or terms and conditions of employment, including, but not limited to, any claimed violation, misinterpretation, misapplication of law, rules or regulations having the force of law, this agreement, policies, rules, by-laws, regulations, directions, orders, work rules, procedures, practices, or customs of the board of education or administration."

This "boiler plate" definition is classic of the union's intent to share in the policy and decision making function of the school board.

In order to preserve management's prerogatives, the following definition is advised: "Any violation of this agreement or any dispute with respect to its meaning or application." As you can see above, management must limit the intent and meaning to what a grievance actually is under the contract. If this is not accomplished at the bargaining table, the right of the board to promulgate policy is severely limited.

Keeping in line with this, a grievance must be defined in the singular. Namely, one grievance must be filed at a time. This action prevents the union from "bunching" grievances at one filing.

As stated before, care must be exercised in agreeing to a definition of grievance. Teacher organizations want to make just about anything subject to a grievance. Here are a few definitions of grievance, found in contracts that might be acceptable to school boards.

1. A "grievance" is defined as a complaint by a teacher or a group of teachers based upon an alleged violation of or variation from the provisions of this agreement or the interpretation or application thereof. (Brocton, Massachusetts)

2. A "grievance" shall mean a complaint by a teacher, or teachers, in the negotiating unit that there has been a violation, a misinterpretation, or inequitable application of any of the provisions of this agreement, except that the term "grievance" shall not apply to any matter as to which (1) the method of review is prescribed by law, or (2) the board is without authority to act. (Denver, Colorado)

3. A "grievance" shall mean a complaint that there has been as to a member a violation, misinterpretation, or inequitable application of any of the provisions of this contract. As used in this article, the term "member" shall mean also a group of members having the same grievance. (Quincy, Massachusetts)

Definitions of grievance that make every rule, policy, regulation subject to a grievance are unacceptable. Note that the above definitions confine grievance to just the contract application - not every rule, regulation, order, etc. The definition of grievance becomes extremely important in view of the teachers' proposal for binding arbitration of grievances. Binding arbitration of a grievance arising due to alleged misapplication of the contract may have some merit. However, binding arbitration of a grievance over any rule, regulation, policy, etc., is completely unacceptable. More about this in Part Two of this book.

The important point to keep in mind is that the scope of the grievance definition should be limited to the scope of topics contained in the negotiated agreement. This is especially mandatory if either advisory or binding arbitration is a step in the grievance procedure. If there is no arbitration involved in the grievance procedure, then a broader definition of a grievance can be tolerated. This point is referred to several more times in this book.

In its agreement with its teachers, the Hartford (Connecticut) School Board has purposely agreed to an unusually broad definition of what is a grievance. The agreement reads as follows:

"A grievance shall mean a complaint by an employee that he has been subjected to arbitrary, capricious or discriminatory policy or practice or that his rights under the specific language of the manual or this agreement have been violated, or that as to him there is a misinterpretation or misapplication of the specific provisions of this manual or of this agreement..."

The term "manual" refers to the administrative manual of the school system. In a growing number of these cases school boards are restricting grievances to alleged violations of the agreement exclusively. The Hartford agreement, however, permits grievances over the administrative manual to be included also.

The reasoning behind this is that by making the administrative manual subject to grievance processing, the scope of the agreement is restricted. Since teachers are guaranteed that the subjects covered in the administrative manual are subject to grievance processing, then they are less driven to make such items negotiable.

In order to maintain final control over such grievances, however, the board reserves final authority, while all other grievances (those arising under the terms of the agreement) are subject to binding arbitration.

Other grievances

If a grievance is an alleged violation of the negotiated agreement, how are other "grievances" or complaints handled? What is a teacher to do who feels his rights under established board policy have been violated? How about

the teacher who feels his work load is inequitable? How about complaints regarding supervisors? How about charges of illegal action? We all know that many disputes arise about matters not covered in the negotiated agreement. There must be provisions for handling such disputes.

One way to handle such disputes would be for the school board to establish unilaterally a complaint procedure to handle all "grievances" which are not alleged violations of the agreement. Such a procedure would naturally need to be flexible, in order to handle such a wide variety of problems. This is the recommended method.

An alternate method would be to use the negotiated grievance procedure. If this method is used, however, time limits, representation rights, arbitration and other elements peculiar to the negotiated procedure should not be applicable.

2

Important Suggestions

In light of the vast number of school systems in the United States, their varying sizes and administrative structures, and the corresponding number of collective agreements, no single process for handling grievances can be recommended which will be advantageous for all school boards. However, certain general recommendations can be made.

1. Grievances should be restricted to claims that a teacher's rights, as provided in the collective agreement, have been violated. Any other complaints such as unfair treatment or treatment which differs from customary practice should be handled through managerial discretion. Also excluded from grievance procedures should be complaints on matters which have their review method specified by law, or complaints about the rules, regulations, and policies having the force or effect of law. Again, the agreed-to grievance procedure should provide only for complaints arising from the application of the collective agreement. To permit more would be to open a Pandora's box. If a teacher has a complaint about a matter not covered in the agreement, then that teacher should pursue whatever appropriate course of appeal is available. Some states have a prescribed procedure for handling such grievances.

2. The local teachers' association should organize a grievance committee (sometimes referred to as the Professional Rights and Responsibilities Committee) which should screen those complaints of teachers for which the association provides counsel, endorsement, support and/or representation. Such an approach involves the association in a responsible way and encourages

the teachers to police their own profession. No ethical group of teachers will support an unreasonable complaint from a colleague. If a teacher is unable to obtain the endorsement of his local association, he should be permitted to lodge his grievance as an individual, but his complaint need not be processed according to the methods spelled out in the grievance procedure. Such complaints may be handled in whatever manner wise personnel practice dictates.

3. Except at the first level, all grievances and all appeals should be put in writing and dated, and upon receipt of such matter, the appropriate supervisor should date and initial it. To do so is nothing more than sound business practice, and it may avoid unnecessary confusion concerning grievances over grievance processing.

4. Grievances should be lodged at the level at which they originate, which 90% of the time is with the building principal. Solving these problems at the lowest administrative level strengthens the authority of the supervisor, avoids channel jumping, and protects higher levels of administration from unnecessary involvement. However, should the grievant fail to resolve his problem at this level, he should be permitted to carry his complaint to the next one. Such a right is firmly imbedded in our legal heritage of the citizen's right to appeal.

5. The time span allowed for appeal to successively higher levels of authority should be spelled out. Failure by the administration to adhere to decision deadlines constitutes the right for the aggrieved to appeal automatically to the next higher level. Failure of the teacher, on the other hand, to adhere to submission deadlines should mean that the teacher is satisfied with the latest decision and waives any right to further appeal. Such an appeal schedule is based upon the established legal concept that delayed justice is justice denied. The term "day" should be defined. If a teacher is provided with five "days" to appeal a decision, are his "days" working days, or do they include weekends and holidays?

6. Grievance discussions should not be permitted to take the teacher (or other professional staff member) away from his regular responsibilities in student-centered activities. Specifically, this means that no classroom teacher

should be excused from his classroom during class time. Regardless of the complaint or who is involved, grievance hearings should not interfere with the ongoing student-centered activities.

7. When a supervisor feels that he would like a witness to a grievance hearing, he should feel free to involve another administrator. Such a practice can provide the supervisor with protection from misinterpretations.

8. After level one (the immediate supervisor) the aggrieved should have the right to representation at his request. A representative of the local association should be available when a grievance is being formally discussed, because settlement of an individual grievance may ultimately affect many members of the staff whom the association has pledged to serve. A second advantage of representation is that such representation provides a witness for what transpires and provides support for the employee in the presence of his superior, the implication being that the employee may be timid before his supervisor, or that the supervisor might intentionally or unintentionally exert undue pressure, or even intimidation. Frequently the negotiating association tries to reserve the right to be present at any grievance session above level one. This applies even when non-members have a grievance. Naturally, a competing organization should not be permitted to provide representation to a grievant.

9. The school board and the association should cooperatively prepare any forms necessary to process grievances. As far as records are concerned regarding grievances, each party should keep his own set of records. However, none of these records kept by the board should be entered in the grievant's official personnel folder.

10. Teachers usually ask for a protraction of the grievance time schedule in order to process grievances occurring near the end of the school year. Although the school board may wish to make a general agreement to <u>try</u> to process such grievances more hurriedly, the board is under no obligation to do so. If the grievant or the association can't meet the time schedule due to their summer vacations, this is their problem primarily. However, failure by either party to meet its schedule deadlines constitutes a waiver.

11. Until final disposition of a grievance takes place, and the decision which caused the grievance is reversed, the grievant is required to conform to

the original direction of his supervisor. This is a part of the "administrative initiative" concept, which means that management initiates decisions on the interpretation of the negotiated agreement as a part of their responsibility to implement the agreement. Keep in mind that the agreement is really board policy, and it is up to the school administrators to implement board policy. Therefore, the grievant should "work now, and grieve later".

12. One of the chief sources of grievances is inconsistent application of the agreement by first-line supervisors and middle-management personnel (supervisors and principals). To avoid this common problem, the entire administrative staff of the school should be called together for a special orientation meeting prior to implementation of the agreement. At such a meeting the superintendent (or his designee) should go over the agreement in detail, giving instructions on how the agreement should be implemented. In the case of comprehensive agreements, it is frequently necessary for the superintendent to prepare a number of administrative memoranda regarding implementation of the terms of the negotiated agreement.

13. Once the contract is negotiated and ratified by the parties, it becomes the responsibility of the chief executive officer to implement the contract through his administrative personnel as mentioned above. If for any reason the teachers disregard this implementation, they are in violation of board policy and subject to appropriate punishment. Many negotiated agreements have clauses which require that the teacher association do something. As an example, the agreement might state, "The Association shall submit its notarized membership list by November 1st of each year to the Board." Should the association refuse to do this, the board could bring to court an appropriate charge. Grievance procedures are provided for those in the bargaining unit. The school board does not use the grievance procedure in order to enforce its own policies, even though these policies were the result of negotiations.

14. Although uncommon in public school negotiations, it is possible to exclude certain clauses from the grievance procedure. This is normally not advisable, since such clauses probably should not be in the agreement unless the board is willing to subject disputes over such clauses to the grievance machinery. An example, however, of such a situation follows:

A teachers' association proposes that, "Summer school teachers shall be hired on the basis of qualifications first, and seniority second." The board's negotiator, however, wants a guarantee that the actual choice of who is hired is left to the board. Therefore he proposes to add a sentence, "However, the decision as to who is hired is the sole and exclusive prerogative of the board. Such an arrangement assures the teachers that both qualifications and seniority will be considered in hiring summer school teachers, but the actual choice belongs to the board.

15. It is very possible that the association or union may wish to file a grievance in its own name. For example, suppose that the negotiated agreement permits the association to use the school mail, and a principal refuses to permit such use. In such a case, the grievance would be most likely filed by the association.

Some consultants go so far as to recommend that all grievances should be lodged by the association. It is claimed that such a method places the onus on the association and restricts the number of grievances due to the many demands made upon the association. It is reasoned that such a method screens out the picayune grievances.

16. A number of states have state-mandated grievance procedures. In such cases a question arises regarding the relationship of the negotiated grievance procedure and the state-mandated procedure. In the absence of contrary advice by the board's legal counsel, boards should make every effort to get the teachers' association to agree that grievances processed under the negotiated procedure shall not be submitted to any other dispute-resolving procedure.

17. Once a grievance is reduced to writing, it must meet certain necessary qualifications in order to be a valid grievance under the terms of the collective bargaining agreement. The form or format for filing a grievance is an item which is developed at the bargaining table. This is important, for in most instances this document becomes a permanent record and shows the parties' position at each step of the grievance procedure, as well as for arbitration. The grievance should include the following items:

- The specific contract clause which was violated should be cited.

- The grievant should be identified along with a space for his signature and the date signed.

- The form should indicate the time, place and events leading up to the grievance.

- The identity of the management personnel allegedly responsible for causing such events and/or conditions to take place should be noted.

- And finally and most important, what remedy or redress is sought?

18. Once a grievance has taken place, a time limit for filing the grievance must be set. For example:

> "If a teacher does not file a grievance in writing with the building principal within five (5) school days after occurrence, then the grievance shall be waived."

Do not allow the commencement of the time limit for filing the grievance to be a subjective determination of the grievant, such as: "the grievance may be filed when the grievant is 'knowingly aware' that there is a cause of action". As mentioned above, time limits should be short, specifying the number of days with exact definitions as to school days or calendar days for appeal. This keeps the grievances up to date and does not allow a backlog of grievances to accumulate. Take notice that the teachers' association will always try to negotiate longer filing and appeal dates, while limiting the board to a much shorter time in which to reply.

The breach of a time limit in the grievance procedure creates a question of arbitrability if the union attempts to appeal the grievance to arbitration. This issue is separate and distinct, which may either be determined in supreme court or by the arbitrator prior to hearing the merits of the grievance.

19. Indefinite clauses in the grievance procedure can be difficult in administering the contract. For example, "a reasonable period of time" or "as soon as thereafter possible". In appealing a grievance from written step to the next, this wording works only to the advantage of the union. Spell out definite time limits for appealing the grievance to the next step of the grievance procedure. Such terms as "day" or "week" are not sufficient. Do we mean

school day or calendar day? The same applies to week: five regularly scheduled working school days or a calendar week?

Why all this fuss? Statutory time limits prevent grievances from getting old. They force the union to either process on time or withdraw. A healthy labor relations environment is one in which there is no backlog of grievances. Again, a backlog works to the advantage of the union. It makes for good union propaganda among its "rank and file", and you are placed at a disadvantage in "trading off" to catch up.

3

The Administrator and Grievance Processing

In many medium and large size school systems there will be three steps in the grievance procedure before the board is required to take action: (1) the building principal, (2) the personnel administrator, and (3) the superintendent or his designee.

The building principal

The building principal always comes from the ranks of the teaching staff. Therefore, his relationship to the grievant is such that many times he can resolve the issue informally. However, if the grievance is not resolved, then it is usually reduced to writing at the first written level or step and re-submitted to him.

In the principal's relationship with the teacher, we must emphasize that his allegiance, duty and responsibility is to the school board and the management team. He must have a working knowledge of the collective bargaining agreement, board by-laws and policies of the school district. Because he is front line management, he must never attempt to cover-up or sweep the grievance under the rug.

Many times the grievance procedure will act as a barometer of union activity. The inward power struggles of the union will be reflected in the number of grievances filed with the principal. An influx of cases can be anticipated when contract negotiations are forthcoming. These tactics can only be ploys of

the union to place it at a better bargaining position at the negotiating table. The building principal must be ever vigilant of the "test case". Certain contract clauses may tend to need further clarification, so the union thinks, and consequently it will utilize the grievance procedure to accomplish this.

For example, a union grieved on the number of sabbatical leaves granted in the following contract clause: "The number of teachers granted sabbatical leaves during the school year shall be a maximum of six (6)."

The union interpreted this to mean that it was entitled to six sabbatical leaves, while the school board felt it could allocate from zero up to six sabbatical leaves, depending upon the amount of money left in the budget for such allocations. As it turned out, there was no money left for sabbatical leaves. The school board was thus faced with a grievance as to the interpretation of this part of the contract.

Next, the building principal must be able to distinguish a complaint from a grievance. Complaints must be "culled-out" at the informal discussion step of the grievance procedure. They must never reach the written steps of this procedure. Hence, complaints are non-arbitrable issues, which must be dealt with using other management techniques.

In order for the principal to understand his management responsibilities under the contract, he must receive training as to its meaning and the intent. The building principal must never be allowed to "rule by the seat of his pants" in interpreting the contract. Training sessions by the board negotiator in problem areas of the contract, grievance handling and role playing in sample cases will prepare the principal in the proper implementation of the contract. If the above is not practical for the school district, then a consulting firm should be utilized to teach these techniques.

There are many instances, however, in which the principal is not or should not be directly involved - situations which affect a group of teachers or all teachers in the system, or a group of teachers or all teachers in a particular school, but where the principal has no jurisdiction. For example:

1. A grievance, processed by the bargaining agent on behalf of a member of the unit, that he should have been appointed to a promotional position

over someone else who was selected, is not necessarily a grievance which should involve a particular principal.

2. A complaint by a teacher that he should not have been deducted a day's salary for an unauthorized absence is not one over which a principal has any direct jurisdiction.

The business manager, personnel director or assistant superintendent

The personnel director, if your school district has such a designation, should be an individual qualified in interpreting the contract on labor relation matters. His duty will be to consult with the building principal on the position management will take on a particular grievance. He is middle management or the second level of appeal in the grievance procedure. When a grievance is appealed to this level, the personnel director will deal with the president of the local union or its grievance committee.

If for any reason a grievance is not resolved at the second level, then the personnel director is responsible for giving counsel to the chief administrative officer as to whether or not the board's position is tenable.

It is the job of the personnel administrator to completely apprise the superintendent of the circumstances of the grievance and all that has transpired from the time the grievance was initiated. In addition, he has the responsibility of advising the superintendent of the pertinent provisions of the negotiated agreement that may be in dispute and the interpretation of the language therein.

In the event that the grievance goes from the superintendent's level to the school board, the personnel administrator familiarizes the board with the case, providing them with copies of all correspondence including decisions at subordinate levels.

After the board "hears" the case, they will undoubtedly have many questions which can best be answered by the personnel administrator. In a great many instances, the board chairman will ask the personnel administrator to draft a letter to the organization and/or the individual teacher in the name of the board rendering its decision, whether or not it is consistent with previous decisions.

If the agreement provides for arbitration as a final step in the grievance procedure, there is a great deal of work to be done by the personnel administrator. Most arbitration agreements provide for a three-man panel, one appointed by the teacher organization, one by the board, and the third member selected by the two appointees, who becomes the chairman of the panel.

In arbitration circumstances, the personnel administrator may have several roles. He should assume the total responsibility of the arbitration case for the school board, advising the superintendent of the requirements of the procedure and taking care of the details involved. By assuming this responsibility, the other administrators are free to carry on their own individual function, with the assurance that the situation is well in hand. More about this in Part Two.

The personnel administrator must gather together all of the records which may be used or subpoenaed in the case, including all of the correspondence relative to the grievance and the decisions at each level. It is his task to "work up" the case for the board and be prepared to advise the board's attorney, if one is to be used, on all aspects of the grievance and the rationale for all decisions made in the case.

The personnel administrator himself may be directed by the superintendent or the board as its member of the arbitration panel - a very appropriate assignment. It will then be his job to convince the third member of the panel that the school board's decision in the case was in accordance with the terms of the agreement and within the scope of their authority.

Indeed, the role of the personnel administrator in the grievance procedure is one of total involvement. In an average size school system, a great percentage of his time is spent in discharging the responsibilities heretofore mentioned. In order to operate an effective grievance procedure in a business-like, professional manner and with a minimum of complications, there must be efficient supervision and administration. The personnel administrator is in the best position to provide it.

The chief executive officer

The chief executive officer or superintendent of the school district would be the same as the president of a corporation in private industry. He

should never be exposed to direct confrontation with the union, either at negotiations or at grievance administration. In private industry, it is unheard of for the corporate president to negotiate the agreement with the union or personally handle a grievance. These responsibilities are professional duties delegated to an individual with expertise in labor relations.

Although in many states the school board is the final step in the grievance procedure, advisory arbitration may have been agreed to. In advisory arbitration, a neutral (impartial) party from outside the district hears both parties and makes a recommendation whether to uphold or deny the grievance.

This does not mean that the arbitrator should supplant the board in the sequence of events. Rather, the arbitrator should step in after the superintendent's designee denies the grievant (if this is the case) and before the board holds its hearing. In this way the school board has the advantage of the advice of the arbitrator before it makes the final decision. In such cases, however, the board is under heavy pressure to follow the advice of the arbitrator.

A growing number of consultants advocate that school boards should not be involved in the grievance process. They reason that a grievance is a complaint regarding the implementation of board policy, which makes a grievance an administrative or executive problem, not a policy or legislative problem. Such consultants maintain that the negotiated agreement should be between the superintendent and the union (as under New York's Taylor Law), and as such the superintendent should be the final step in grievance processing, unless binding arbitration is agreed to, in which case the arbitrator's ruling would come after the superintendent level. This will be discussed in greater detail in a later chapter.

4

The Chapter Chairman or Building Representative

Regardless of the fact that the chapter chairman (sometimes referred to as the building representative or grievance representative) may make the professional life of the principal quite difficult at times, it must be borne in mind that he has been selected by the majority of the union members to protect their rights under the contract. For him to do less than that would be to betray the trust placed in him by his fellow union members.

At times he is placed in the unenviable position of supporting a grievance on behalf of a teacher who is pettifogging or nitpicking. A capable chapter chairman, of course, endeavors to head off such absurdities, but when he cannot, he must bolster the cause of the grievant and present a strong case during the step one hearing.

At other times the chapter chairman may be wholeheartedly convinced of the righteousness of the grievance, while the principal may be just as fervently convinced contrariwise.

In such instances, mutual respect must be observed, for after the immediate grievance has been adjudicated, the life of the school must continue, the leadership of the union and the head of the school peaceably adjusting their differences. Just as two lawyers may argue with all legal weapons at their command in the courtroom, yet remain friendly, so the chapter chairman and the principal may cross verbal swords in the various hearings while remaining on amicable terms in other professional matters.

This is of paramount importance, for the chapter chairman is in a position to prevent grievances, to help adjust the source of grievances so that complaints will be withdrawn before becoming formalized, to suggest to the principal future administrative policies which will tend to avoid recurrent grievances, to convince an incipient grievant that either he does not have a justifiable complaint or that his complaint can be handled informally.

On the other hand, there are times when the chapter chairman justifiably induces a staff member to grieve, even though that individual is willing to accept a condition not clearly tolerated by the contract.

From the point of view of the principal, this "suffering" staff member may be considered highly cooperative, yet it must be recognized that the chapter chairman rightfully considers the condition as one which must be rectified for the greater benefit of all staff members.

As a secondary consideration, the chapter chairman does not wish to be accused of playing "footsie" with the administration, or of currying favor by overlooking violations. And as a third consideration, the teacher who accommodates the principal may be accused by other staff members of toadying in an effort to secure advancement.

Cut Along This Line

5

A One-Page Grievance Formula

You are the front line of management to your employees and make your own determinations. A supervisor who openly relies on the judgment of others - or who says he is making a decision because someone else told him to do so - quickly loses the respect of those he supervises. Of course, in many cases you will want to discuss the matter with your immediate supervisor. You are entitled to this advice - often you must have it!

- Get all of the facts, restate them and then settle grievances informally and quickly. Be prompt in making settlements.

- Be sincere, sympathetic, fair, and understanding. You will enjoy the respect of all your work force if your impartiality and unprejudiced thinking is obvious.

- Do not "bargain" grievance adjustments. Be a factgetter, a decision maker and not a negotiator. Judge each case on its individual merits.

- Avoid the use of underhanded methods to "outsmart" grievants. Be above any trickery. You are going to live a lifetime, and your long-range reputation means a lot more than any temporary adjustment which smacks of deceit.

- Your decision-making must be clear and definite. Be tactful, especially in the event of a grievance denial. It is natural to resent the denial of an alleged right or to be told that one is wrong. Don't be afraid to admit when you are wrong, however. This attitude encourages employees to admit their own errors. Also, don't blame others for your mistakes.

- You are responsible for carrying out your decisions after they are made and communicated to employees. This follow-up disposes of the immediate grievance and often prevents the eruption of future grievances.

A Checklist to Use

1. Receive the grievance well: _____Give the man a good hearing. _____Listen - don't interrupt. _____When he has finished, ask questions, but take no position. _____Take notes, KEEP RECORDS. _____Ask the man to repeat his story. _____Then repeat the essentials in your own words.

2. Get the facts - all the facts available: _____Learn the section of the contract allegedly breached. _____Check the union contract. _____Ask questions requiring more than a "yes" or "no" answer.

3. Take the necessary action: _____Settle the grievance at the earliest moment that a proper settlement can be reached. _____Explain your position. _____Once it is made, stick to your decision. _____Make the corrections required by your decision if possible. _____If necessary, pass all the facts to the next step or level.

4. Follow up: _____Make sure the action was carried out. _____Be alert to situations which might bring grievances. _____Correct such situations before a grievance is filed. _____Know your employees and their interests. _____Maintain an atmosphere promoting the highest morale. _____Constantly support management.

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5

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Part II

Grievance Arbitration

6

Background

Arbitration is nothing new. It has been going on for centuries. It is a process whereby an impartial third party referee listens to the complaints of two parties, weighs them, and then renders what he deems to be a fair and legal decision.

About half the states recognize arbitration in the private sector as an important process, to the extent that these states have passed laws giving arbitration awards the force of law. Where such legislation is in effect, the arbitrator's award is even harder to overturn than a court decision. This is true because the parties usually agree in advance to abide by the award of the arbitrator. A court ruling may be appealed to a higher court, but an arbitration award may not, unless the complainant can clearly demonstrate to the court that the arbitrator overlooked certain evidence, denied a legitimate request for postponement, or had personal interest in the case. Seldom, however, have arbitration awards in the private sector been challenged, and then only a fraction of these have been sustained.

Anyone who challenges the contention that disputes inevitably arise over the interpretation of a negotiated agreement probably has had very limited experience with negotiations. Negotiated agreements are written by lay persons who sometimes make mistakes in the use of their language.

An example of such usage is the following sentence, which the author first examined in elementary school: "I saw a horse looking out my bedroom window." The controversy this sentence evoked is obvious. Or, how about

this sentence: "She was a small farmer's daughter." What or who was small - the daughter, the farmer, or the farm?

Here is a clause from an agreement bound to divide any group over its interpretation, especially a group containing both management and labor personnel: "An employee who does not work the day before the holiday or the day after the holiday will not be paid for the holiday." The sentence could have been clarified by inserting the word "either" between "work" and "the", or by inserting "both" between "work" and "the" and substituting "and" in place of "or" between "holiday" and "the".

Here is another example from a dispute regarding a two-year agreement: "Salaries shall be renegotiated the second year of this agreement." Did the parties mean the salary schedule, or did the parties mean any matter related to payment for services rendered - including fringe benefits?

The very nature of negotiations almost guarantees a dispute over contract interpretation. Both parties want an agreement, but they are in an adversary relationship; therefore, there is a tendency to hear what one wants to hear and read into tentative agreements what one wants to read. Even the verbal manner in which a sentence is delivered can convey an entirely different meaning than that which emerges months after the agreement is reached. Consider, for example, this sentence: "Ties that bind easily come apart." The meaning depends upon whether the pause comes before or after the word "easily".

Here is another example from an agreement which caused serious dispute between the parties: "Administrators shall receive the same benefits as teachers." One can imagine how complicated became the grievance over this clause.

In the above examples, the disputed language was jointly written and agreed to. Both parties throught they had an agreement until the agreement was implemented. According to the rationale of arbitration, neither party should be allowed to decide what the disputed language means, since both parties are biased. Therefore, goes the argument, an impartial third party, an arbitrator, is the logical solution to the problem.

7

The Rationale for Binding Arbitration of Grievances

Given the definition that a grievance under collective bargaining is an alleged violation of the negotiated agreement, then a number of arguments can be made for binding arbitration as the final step in the grievance procedure. Many of these arguments originate in the private sector, an important point which is referred to at the end of Chapter 9. These arguments are:

1. Teachers will be provided greater hope that ultimately at the end of the long grievance road there will be an unbiased, impartial, just court of last appeal.

2. The specter of this last court of appeal should encourage administrators and supervisors to improve their respective practices. After all, no administrator enjoys having his decisions reversed.

3. Arbitration will eventually provide a series of precedents upon which better personnel practices can be built.

4. The use of arbitration can be advantageous to administration in that it provides uninterrupted service by teachers, without resorting to threatening tactics, such as strikes or sanctions.

5. Under the encouragement provided by an arbitration clause, teachers are more likely to express their problems, thus providing the administrator with a truer picture of trouble areas.

6. No one can predict how an arbitrator will rule. Thus parties are encouraged to reach a compromise and avoid the risk of the unknown - the arbitrator.

7. It is a mechanism to assure complete and final settlement of grievances. Generally, there are no appeals from arbitration decisions.

8. It is a rapid means for settling differences. The alternative, processing through the courts, can be an extremely time-consuming process, and hence, totally unacceptable in some cases.

9. Arbitration is less expensive than seeking settlement through the courts. Usually, the only fee involved is the daily rate of the arbitrator, plus his travel expenses.

10. In the case of arbitration of grievances in labor relations, the voluntary agreement between labor and management to accept the arbitrator's award permits the parties to continue to live together without the frequent bitterness on the part of one party, which is often the case in disputes settled by court action.

11. Also in the case of grievance arbitration, the dispute, which arises from an alleged misinterpretation or misapplication of the agreement, concerns a document which is not written in legal form. Negotiated agreements are usually prepared by lay persons for application by lay persons. Therefore, disputes over such a document should be settled in a lay atmosphere.

12. Our society and especially our schools hold that understanding of the values of individual dignity and individual differences is essential to moral development. An aggrieved teacher should expect a process of adjudication which exemplifies these values.

13. Morale of teachers and administrators can be improved by just knowing that there is a just termination point, should a serious dispute arise.

14. A teacher employee has much at stake in his work: years of preparation, perhaps years of experience, fringe benefits, friends, home. In some cases there may be too much at stake for both parties in the dispute to have any permanent resolution of the problem dictated by one of the parties involved, thus making the outside third party most important in the process.

15. Arbitration can be a real safety valve. Issues that may develop into a long negotiations dispute may be handled with arbitration in the grievance procedure and settled.

16. In most cases a teacher organization will not process unsound grievances to arbitration for two reasons. First, since the local association must share the expense of arbitration, it will not underwrite such expenditures foolishly. Second, no responsible association can affort to support unsound grievances, only to have the cases lost in arbitration. Very many lost cases would undermine the support of the members. Some administrators feel that arbitration of grievances will result in abuse by the local teacher's group, but this is not the case. The local teacher group stands to lose money as well as support through the processing of indefensible grievances.

8

Arbitration as a Subject of Arbitration

In hundreds of school districts, negotiations impasses have been reached over the teachers' demand for final and binding arbitration. What happens when a demand for grievance arbitration is submitted to impartial factfinding or advisory arbitration? In most cases the factfinder or arbitrators will recommend that the teachers be given their request. In a minority of cases, however, (especially in states where there is no collective bargaining law) the school board advocates have been able to get a recommendation for advisory arbitration.

As evidence of a factfinder's reasoning regarding grievance arbitration, following is the report of Jonas Silver, a factfinder in a dispute between U.F.S.D. #3, Port Jefferson Station, New York, and the Port Jefferson Teachers Association.

The Issue of Final and Binding Arbitration

The Association requests that the factfinder recommend that teacher grievances remaining in dispute after discussion between the Administration or the Board and the Association, shall be submitted to arbitration before an impartial third party whose decision would be final and binding upon the Association and the Board. The Association would include within the definition of a grievance subject to final and binding arbitration, statements of policy of the Board that affect terms and conditions of employment.

The Board is opposed to final and binding arbitration though it is not adverse to advisory arbitration in which a third party would make recommendations as to the disposition of a grievance having to do only with violations of the agreements. Grievances arising out of statements of policy, however, in the Board's view, would not be subject to advisory arbitration.

The Association argues that binding arbitration is necessary in order to fairly decide employee grievances where both parties remain in disagreement, and consequently the Board would be the final judge of its own action. Inasmuch as the teachers do not have the right to strike by way of correcting an alleged breach of terms and conditions of employment, they should be afforded instead orderly recourse to decision by an impartial arbitrator. The Association argues further that arbitrable grievances should include disputes over Board policy because many of the terms and conditions of employment are contained in or become the subject of Board policy and are not to be found in the collective agreement. The Association points to several recently negotiated agreements between school districts and teacher associations which provide for arbitration of grievances.

The Board argues that it is unable to accept binding arbitration because a third party would then make decisions affecting matters of policy which are the responsibility of the Board as the representative of the people of the community. The Board explains that it is neither required by law nor can it, practically speaking, await the approval of the Association before it adopts or implements policy which may in some way be said to affect terms and conditions of employment. On the other hand, the Board suggests, it is willing to attempt advisory arbitration with respect to alleged violations of contract provisions as a way of exploring this new and uncharted area of turning to a third party in the settlement of grievances.

A. Discussion and Finding of Fact

However time-consuming, involved and frustrating collective bargaining may become with respect to the wages, hours and conditions of public employees, agreement, finally achieved, brings with it a measure of definiteness and understanding as to the terms of employment over a fixed duration. However, the most skillful of negotiators cannot write the provisions of the agreement in such manner that all day to day questions relating to employment conditions will find ready answers by reference to agreement language. Despite the best efforts of the Board and the Association to fairly administer the agreement, there will inevitably occur those differences in interpretation of its terms with regard to employee grievances that will not yield to persuasion.

The prospect of the existence of continuing grievances in the life of a collective agreement is a commonplace in the administration of bargaining contracts covering employees in private industry. There is no reason to expect that grievances will be uncommon in the public sector, where recognition of and collective negotiations with employee organizations has only recently come of age and, if anything, the agreement provisions are limited in substance and reach by the restraints of statute, administrative regulation, and the undelegable discretion of governmental bodies. If, therefore, an agreement such as the one presently being fashioned by the Association and the Board is to be made to work in practice and thus fulfill the intention of the parties to afford meaningfully satisfactory working conditions, teacher grievances, in appropriately processed fashion, must become susceptible of final solution in the event Board and Association are unable to agree as to the outcome.

Faced with the problem of achieving speedy and judicious decision of unsettled grievances, management and union in private industry early recognized that terminal arbitration would furnish an adequate remedy. And, the Congress gave approval to terminal arbitration of grievances when, in 1947, it included in the Taft-Hartley Act an expression of public policy in favor of grievance arbitration in private industry. Beginning a decade later, the U.S. Supreme Court, in a series of landmark decisions, judicially sanctioned the enforcement of collective bargaining contracts which provide for final and binding arbitration of grievances. The Court noted, among other considerations, the use of arbitration as a substitute or quid pro quo for the contractual commitment of a union to a no-strike clause. In view of the prohibition against strikes by public employees under the New York State Public Employees' Fair Employment Act, the adoption of binding arbitration of grievances, within lawful limits, would likewise appear to be a quid pro quo for the declared employee disability.

Section 204 of the Taylor Law requires public employers to negotiate collectively with employee organizations "in the determination of, and administration of,grievances arising under the terms and conditions of employment of the public employees..." It also requires that public employers "negotiate and enter into written agreements with such employee organization in determining such conditions of employment." By the separate reference to the administration of grievances, the legislature showed the particular importance it attached to grievance handling and determination. Indeed, it is a declared public policy of the state and a purpose of the Act, among others, "to promote harmonious and cooperative relationships between government and its employees..." A grievance procedure which provides for terminal arbitration in a final and binding manner where otherwise there would remain the unilateral decision of the Board and/or Administration, contributes substantially to such declared legislative purpose.

Though the Governor's Committee on Public Employee Relations did not concern itself with methods of grievance settlement, it did state:

> We strongly encourage all governmental levels that the representatives of the employing agency and the employees work out their own procedures for the handling of grievances including terminal arbitration on a case-by-case basis. We suggest this ad hoc basis because of the doubt expressed by some that a provision for binding arbitration applicable to all future disputes would be legal.

In singling out terminal arbitration as a desirable procedure for grievance disposition, the Committee refers to the doubt of some as to the legality of binding arbitration with respect to all future disputes. It is to be noted, in this connection, that a number of school districts on Long Island (including West Islip, Northport, Brentwood, Cold Spring Harbor, Southhold, Ricksville and Amityville) have to this date negotiated with teacher associations provisions for binding arbitration of grievances. It appears that appropriate safeguards have been written into these contracts relative to the legal problem of

assuring to the school district that it will continue to exercise its statutory authority under the Education Law, as well as the rules and regulations of the Commissioner of Education. The undersigned received in evidence, the current agreements of West Islip (Long Island), Buffalo and Schenectady with teacher associations which contain provision for final and binding arbitration of grievances subject to legal safegurards.

It appears therefore that the problem of legality is not insurmountable and does not require the solution offered by the Board, i.e., advisory arbitration. The power of the arbitrator may be defined so as to prohibit unlawful incursions into the area mandated by statute, or reserved to the undelegable authority of the Board,

As for the Board's related concern that the definition of a grievance submissible to arbitration should not intrude on the Board's policy making function, the undersigned believes that such concern, while not without substance, need not remain unquieted. The Association's right to grieve is predicated on "grievances arising under the terms and conditions of employment..." (Section 204) and "terms and conditions of employment means salaries, wages, hours and other terms and conditions of employment." (Section 201,5)

In the present state of collective negotiations between the Board and the Association, the forthcoming agreement will hardly define the "terms and conditions of employment" with completeness. The Board's statements of policy will continue to be referrable to "terms and conditions of employment" as at present. To the extent, therefore, that such statements of policy give rise to grievances because the claim is made that application of policy involves differences as to "terms and conditions of employment", the grievance would be no less a grievance than one arising solely under the collective agreement "terms and conditions." Such grievance should therefore be subject to the same procedure terminating in final and binding arbitration. However, it must be clearly understood that the grievance would be a complaint of a teacher or teachers who allege that they are prejudiced in some way by the application of the policy, just as the grievance under the agreement would involve a claim of teacher or teachers that they are adversely affected by the application of a provision of the agreement.

In view of the foregoing, the factfinder shall recommend that the parties include in the forthcoming agreement provisions for final and binding arbitration of grievances in the critical sections of the grievance procedure in dispute, as set forth in the Section, "Recommendations".

9

An Opposing Point of View

The school board as the final step

The school board is a legislative body. As such it should remain free from encumbrances (such as labor contracts) which take away its legislative freedom to represent all the people. This is one reason that school boards (or members thereof) should not be involved in negotiations. Negotiations should be assigned to the executive arm (the superintendent and his administrators). The tentative agreement should then be presented to the board for appropriate action as board policy. In other words, the agreement is allowed to be implemented by the superintendent because the board adopted the necessary policy to make implementation possible.

With this concept in mind, it is questionable to what extent binding arbitration of grievances (alleged violations of the agreement) is legal. For example, let's look at three of the nation's most sophisticated bargaining laws covering public employees - New York's Taylor Law, Pennsylvania's Act 195, and Rhode Island's Michaelson Act.

The New York Law

There is a requirement in the Taylor Law which requires the following statement to be placed in each negotiated agreement: "IT IS AGREED BY AND BETWEEN THE PARTIES THAT ANY PROVISION OF THIS AGREEMENT REQUIRING LEGISLATIVE ACTION TO PERMIT ITS IMPLEMENTATION BY

AMENDMENT OF LAW OR BY PROVIDING THE ADDITIONAL FUNDS THEREFOR, SHALL NOT BECOME EFFECTIVE UNTIL THE APPROPRIATE LEGISLATIVE BODY HAS GIVEN APPROVAL." This wording is required as a result of an amendment to the Taylor Law to make it clear that the school board is not bound by an agreement between the superintendent and the union.

Mr. Bernard McGivern, chief counsel for the New York School Boards Association, presents this view of the school board's responsibility to the negotiated agreement:

The Taylor Law makes it clear that the chief school administrator negotiates with employee organizations; and any agreements reached are binding only upon him and the organization. Under various provisions of the New York School Code, the superintendent has certain responsibilities and authority which he exercises, with or without the approval of the board of education; and in respect of those responsibilities and authorities, the agreement is binding. The Education Law gives certain other authority to boards of education in order that they may carry out their duties under the law. No agreement between the chief school administrator and an employee organization can bind the school board to a particular course of action in respect of the responsibilities which are imposed upon boards of education.

From the foregoing, you will notice that the board of education does have a role to play after negotiations have resulted in agreements. This role, however, is no different from the role which the board of education would perform in the event no agreement was reached. The board of education has certain statutory obligations to complete, whether or not any agreement is reached, and these obligations include establishing salary schedules, establishing and filing grievance procedures, adopting school calendars and preparing budgets.

In carrying out its responsibilities under the law, the board of education will certainly take into account the provisions of any agreements which have been made by the chief school administrator. In preparing a salary schedule for teachers, the board will undoubtedly follow the agreement with the teacher organization insofar as it is possible to do so. The board is not bound, as a matter of law, to adopt a salary schedule which is identical with the agreement reached by the chief school administrator and the teacher organization. It is, however, morally bound to include the provisions of the agreement in the salary schedule adopted by the board of education, unless the parties to the agreement exceeded what the board of education had clearly indicated were the limits of the ability of the district.

In this connection, I should point out that the board of education does not ratify, nor adopt, the agreement between the chief school administrator and the employees. The law does not authorize a board of education to ratify any agreements reached with employee organizations, nor to adopt such agreements as their own agreement with the employees involved. The agreement is

always a contract between the executive branch and the employee organization. The school board is the legislative branch of the school district, and it has no authority to enter into contracts with employee organizations.

The function of the board of education is simply to implement the various provisions of the agreement which require legislative action. The adoption of a salary schedule for the district is a legislative responsibility. The agreement with the executive branch is not a salary schedule, but rather a contract between the chief executive and the employee organization. The board must go forward with its legislative responsibility by adopting a separate salary schedule based upon what is said in the agreements which have been reached with employee organizations.

The same approach must be taken with respect to grievance procedures which the legislative branch is required, by Article 16 of the General Municipal Law, to adopt for the district. An agreement with the executive branch may set forth a grievance procedure which is acceptable to the chief executive officer and the employees concerned. The agreement is not a grievance procedure and the board of education cannot adopt a grievance procedure simply by approving the agreement. The board of education is required to adopt a separate grievance procedure which takes into account the provisions found in the agreements.

In Mr. McGivern's view, there can be no binding arbitration of grievances on matters which require legislative action by the school board. This view is not fully shared by some other New York authorities, however.

The Pennsylvania Law

Pennsylvania's Act 195 has this to say about grievance arbitration in Article IX, Section 903:

Arbitration of disputes or grievances arising out of the interpretation of the provisions of a collective bargaining agreement is mandatory. The procedure to be adopted is a proper subject of bargaining with the proviso that the final step shall provide for a binding decision by an arbitrator or a tri-partite board of arbitrators as the parties may agree. Any decisions of the arbitrator or arbitrators requiring legislation will only be effective if such legislation is enacted.

In both laws it is questionable that the "binding" award of the arbitrator can become effective if legislative action is required by the school board. If no action is required by the board, then it would appear that the arbitrator's decision is truly binding.

Let's consider two examples. First, an arbitrator rules that there must be an adjustment in the salary schedule. In order for the funds to be made

available, the board might be required to take legislative action at a public meeting. And, until such action is taken, the arbitrator's award cannot be implemented. As a second example, an arbitrator rules that teacher X is entitled to make an entry on his evaluation form. This ruling requires only administrative action, not board action, and therefore would be final and binding.

The Rhode Island Law

Rhode Island has a collective bargaining law which requires binding arbitration of non-financial disputes in new contract negotiations. This is one of the few such laws in the nation. Under this law, a negotiations impasse regarding the use of school bulletin boards by the union would be submitted to binding arbitration, since the use of bulletin boards is a "matter not involving the expenditure of money". As it turns out, however, this requirement is also applicable to grievance arbitration. In other words, if the grievance award requires the expenditure of money, then the award is advisory to the school board.

Cranston decision not binding

The Cranston, Rhode Island, School Committee was directed by the Rhode Island Labor Relations Board not to comply with an arbitration award involving release time for teachers' nonclassroom professional activities, because a release time plan required expenditures of money, and was therefore exempt from state laws requiring binding arbitration of disputed noneconomic contract terms.

The impasse on planning time between the school and the Cranston Teachers Association dated back to the spring of 1969, when CTA, the exclusive representative for all certified teachers in the Cranston school system, negotiated an agreement providing salary raises and certain fringe benefits.

The one item upon which the parties were unable to agree - paid time off for curriculum preparation during the school day - was submitted to arbitration. Subsequently, a subcommittee composed of two administrators and two teachers developed four plans for implementation of a release time program.

CTA maintained that the arbitrator's award meant that the school committee had to discuss the choice of plans with CTA representatives and then choose one of the four. Thus, when the school did not implement any plan, CTA filed unfair labor practice charges with the board, contending that the school had failed to implement the provisions of the award and that it had failed to negotiate in good faith as to the implementation of the award.

Under the provisions of Rhode Island's Michaelson Act, which calls for collective bargaining between teachers' organizations and schools and provides for settlement of disputes, both parties are obligated to bargain in good faith, and either party may request arbitration of a bargaining dispute.

The statute specifically provides that the "decision of the arbitrators shall be made public and shall be binding upon the certified public school teachers and their representative and the school committee on all matters not involving the expenditure of money."

The Cranston School Committee maintained that the release time award involved the expenditure of money and accordingly was not binding nor mandatory, but merely advisory. The committee further presented evidence to the board to show that it had been negotiating in good faith on implementation of a release time plan, even though the award was not binding. Said the board:

> After reviewing the testimony and arguments presented by both parties and the arbitrator's award in question, the board is of the opinion that this award does in fact call for the expenditure of money and thus is not binding on the respondents under the Michaelson Act. The board feels that the testimony clearly revealed that each of the plans suggested in the award would call for the expenditure of money. Further, the board feels that the record established before it shows that the respondents have been properly negotiating as to the implementation of said award. In fact, the respondents did agree to implement a variation of plan A as described in the award.

While the board ruled that the school committee is not obligated to implement the award, did not fail to negotiate in good faith over its implementation, and therefore was not guilty of an unfair labor practice, it further suggested that the parties continue to negotiate in good faith for the "implementation of an acceptable plan for paid duty-free time for subject related activities."

The school board as an employer

Many teacher negotiators base their case for binding arbitration of grievances on the arguments developed in the private sector and which appear in Chapter 7.

All of these arguments do apply to labor relations in the private sector, where there exists a profit incentive. Under the profit incentive, it is understandable that an employer cannot be impartial in resolving labor disputes. Naturally, the employer wants what is best for company profit. The purpose of private business enterprise in America is to make money, and there is nothing wrong with that purpose. But the purpose of government, including public education, is not to make a profit. The purpose of government is to provide services to the public. There is no profit incentive. The employer is a legislative body which has been chosen by public votes.

With this concept in mind, binding arbitration of grievances makes less sense in government relations than it does in private enterprise. Under this concept the school board is far more than an employer. The school board is a legislative body which has an overriding responsibility to the entire community, part of which is composed of teachers.

Under this concept the school board can be far more impartial in resolving labor disputes than could a board of directors of a private company. This concept is especially applicable under a bargaining law such as New York's Taylor Law. As mentioned before, negotiations in that state are between the executive branch of government and the employees, thus freeing the legislative body (the school board) from biases which arise in the negotiating process. Under such an arrangement the school board can be turned to as a truly impartial body to take final action on disputes arising in labor relations.

10

Negotiated Agreements And Court Enforcement

Can school boards be forced to live up to the terms of a negotiated agreement? What is the relationship between the individual teacher contract and the negotiated agreement? For the most part these two important and perplexing questions remain unanswered. Until they are, the contractual nature of collective bargaining in the public sector remains unclear.

Commenting on court enforceability of negotiated agreements in the public sector, Dr. Richard Blankenburg, a professor of education at the University of Connecticut, had this to say:

Cases involving the enforcement of collective bargaining contracts are few in number, since most disputes over collective bargaining contracts are settled by private arbitration as provided for in the contracts themselves. One reason is that court litigation moves too slowly - a court decision would not ordinarily be expected before the next contract would be negotiated.

Another reason that litigation seldom arises over collective bargaining contracts is that the ultimate decisions are usually based on legal issues, rather than the bread and butter issues involved in the controversy, and neither party is satisfied with that kind of a decision.

A possible third reason why collective bargaining contracts do not ordinarily find their way to the courtroom is that in ordinary litigation the individuals involved in the suit usually vow never to deal with one another again. In the case of the collective bargaining contract the parties know that they ultimately must make another contract, and another, and another. However, collective bargaining contracts could be, indeed at times have been, the subject of court litigation.

Most collective bargaining contracts in industry are enforced under some provisions of federal legislation. Collective bargaining contracts between school

districts and teachers are not provided for in the federal statutes. Therefore, the law relating to collective bargaining contracts in education must be considered apart from collective bargaining contracts in industry, except that the law, as it applies to industry, might be persuasive to the courts in litigation involving collective bargaining contracts in education.

The first consideration a court would have to make concerning a collective bargaining contract in education is whether or not the contract was valid. As previously stated, collective bargaining contracts in industry are covered by federal statutes, and as such, are considered valid contracts. However, the validity of collective bargaining contracts in education is questionable in some of the various (state) jurisdictions. (Even in states where statutes validate collective bargaining contracts in education, the enforcement of these contracts is often not provided for.

One important question to consider in any public school collective bargaining contract litigation, is the relationship of the individual teaching contract to the collective bargaining contract.

In Michigan this is no longer an issue, because under Michigan's law the terms of the negotiated agreement are incorporated into the individual teacher contract. However, in other states, the question remains unanswered. School boards should not be misled by this fact, however. When school boards enter into negotiations, they should do so with the full intent of reaching a fully binding contract with the teachers' organization and those it represents.

11

The AAA in Grievance Arbitration

Arbitration is the reference of a dispute, by voluntary agreement of the parties, to an impartial person for determination on the basis of evidence and arguments presented by such parties, who agree in advance to accept the decision of the arbitrator as final and binding.

Thus, the arbitration process begins where other methods of dispute settlement leave off; in referring a matter to arbitration, parties are presumed to have explored every avenue of negotiation and compromise. As a last resort, they call upon an impartial person for a judicial decision and agree to abide by the result, (if there is agreement to binding arbitration in the negotiated agreement, or if required in the state law, as in Pennsylvania).

Contract interpretation disputes

Contract interpretation disputes, usually called grievances, constitute the overwhelming majority of matters brought to arbitration. Before reference to arbitration, such controversies usually go through several steps of grievance procedure set forth in contracts, during which each side tries to convince the other that his interpretation and application of the contract to the given situation is the correct one. It is also during grievance procedure that compromises are attempted. Failing settlement during these negotiation steps, some

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This chapter has been adapted from Labor Arbitration, Procedures and Techniques, by the American Arbitration Association.

collective bargaining contracts provide for impartial arbitration. When time is critical, parties sometimes mutually agree to by-pass earlier steps and bring a controversy directly to arbitration.

Arbitration clause

The advantage of a future dispute arbitration clause is that it leaves nothing to chance. When a controversy arises, the parties may be in no mood to agree and it is sometimes difficult to get both parties to submit to the procedures of arbitration. But when they are subject to a clause, arbitration may be initiated without delay by either party.

The agreement to arbitrate, if it does not refer to established rules and procedures, may not by itself answer all questions. Among the problems that remain are:

- How shall arbitrators be appointed?
- When and where shall hearings take place? And who will make these decisions if the parties cannot agree?
- Shall the arbitration board consist of one or of three neutral arbitrators?
- If a tripartite board is preferred, what shall the remedy be if the two-party appointed arbitrators cannot agree upon an impartial member of the board?
- Who may represent the parties? Shall witnesses be sworn?
- How shall requests for adjournment be handled? May briefs be filed?
- How are hearings closed and under what conditions may they be reopened?
- When will the award be rendered? To whom delivered?
- How much should the arbitrator be paid?

All these, and many other procedural questions, are important for prompt and effective arbitration. It would obviously be impossible for parties to anticipate them all and spell out the answers in the collective bargaining agreement. An effective, though simple, solution is found in an arbitration

clause which, by referring to established rules such as those of the American Arbitration Association, at once answers the basic WHAT, HOW, WHEN, WHERE AND WHO of arbitration.

Parties may also want other questions answered. They may want to be sure that certain steps precede arbitration or they may want to spell out which types of issues are arbitrable, and which are to be excluded from the arbitration process. In that case, they may vary the language of the arbitration clause to suit their needs.

But in any case, reference to the Voluntary Labor Arbitration Rules of the American Arbitration Association provides a quick answer to most questions and a remedy for the failure of either party to perform certain acts called "conditions precedent", without which arbitration might be frustrated.

A good 50-word clause

"Any dispute, claim or grievance arising out of or relating to the interpretation or the application of this agreement shall be submitted to arbitration under the Voluntary Labor Arbitration Rules of the American Aribtration Association. The parties further agree to accept the arbitrator's award as (final and binding) (or advisory) upon them."

This clause, or any other clause referring to established rules of the American Arbitration Association, answers the questions below:

WHAT -

- is to be arbitrated?
- are the duties and obligations of each party?

HOW -

- is arbitration initiated?
- are arbitrators appointed and vacancies filled?
- are time and place for hearings fixed?
- are hearings opened? Closed? Reopened?
- are costs controlled?

WHEN -

- are arbitrators appointed
- must hearings begin?
- must the award be rendered?

WHERE -

- are notices, documents and correspondence to be sent?
- shall hearings be held?
- is the award to be delivered?

WHO -

- administers the arbitration?
- keeps the records and makes technical preparations?
- gives notice of hearings and other matters?
- appoints the arbitrators if the parties cannot agree?
- fills vacancies on arbitration boards when necessary?
- grants adjournments?

Submission agreement

Either party to the controversy may file a submission agreement with an office of the Association, provided it is signed by both parties. A submission agreement must include a brief statement of the matter in dispute and of the relief sought. If the parties have named an arbitrator, the Association will communicate with him and with the parties, arranging a suitable time and place for hearings. If an arbitrator has not been named in the submission agreement, he will be selected in accordance with AAA Rules.

The American Arbitration Association will supply forms on request. In the absence of forms, parties may initiate arbitration through ordinary letters. In any case, whether the parties use forms or correspondence, the following information is essential:

1. Names and addresses of both parties involved in the dispute.

2. Date of the collective bargaining agreement and the full text of the arbitration clause.

3. The issue to be arbitrated, specifically and concisely stated, with an indication of the relief sought.

4. Dates involved in the grievance, where appropriate.

5. Names of employees involved, if any, together with their positions or job classifications, where necessary.

6. The signature of the union or school board official authorized to file an arbitration request.

How arbitrator is selected

The American Arbitration Association maintains a National Panel of Arbitrators whose members, after having been nominated (usually by prominent citizens of their communities), have been selected for their experience, competence and impartiality. The candidate for enrollment in the Panel is asked to submit a statement of his professional qualifications and references as to his acceptability by both labor and management. This data is verified by a special AAA Committee on Panels which makes the decision on the prospective arbitrator's eligibility. Once accepted as a member of the National Panel of Arbitrators, his name is sent out on lists from which parties may select arbitrators in particular cases; it is also from this Panel that the Association makes administrative appointments.

In their agreement to arbitrate, parties may provide for any method of selecting an arbitrator. Methods currently in use vary widely; unions and companies are advised to consider the system they adopt carefully, as the speed and efficiency of arbitration may be affected.

Unless parties have indicated another method, the American Arbitration Association invokes the following simple and effective system:

1. On receiving a request for arbitration, the AAA acknowledges receipt thereof and sends each party a copy of a specially prepared list of proposed arbitrators. In drawing up this list, he is guided by the statement of the nature of the dispute. Basic information about each arbitrator is appended to the list.

2. Parties are allowed seven days to study the list, cross off any names objected to, and number the remaining names in the order of preference. Where parties want more information about a proposed arbitrator, such information is gladly given on request.

3. Where parties are unable to find a mutual choice on a list, the Association will submit additional lists, at the request of both parties.

4. If, despite all efforts to arrive at a mutual choice, parties cannot agree upon an arbitrator, the Association will make an administrative appointment, but in no case will an arbitrator whose name was crossed out by either party be so appointed.

Collective bargaining agreements sometime provide for tripartite boards of arbitration without setting time limits for appointment of the party-appointed arbitrators. In that case, the American Arbitration Association system, as indicated in the four steps above, will be applied so as to give force and effect to the wishes of the parties. Thus, unless parties have indicated otherwise, each side is given seven days within which to name his arbitrator.

By the same token, where the collective bargaining agreement provides for selection of the impartial member of the board of arbitration "by the American Arbitration Association", the lists will be sent to the parties in accordance with steps 1 through 4, above. On the other hand, where parties prefer the two party-appointed arbitrators to choose the third, lists will be sent to the arbitrators directly, with the same time limits in effect.

The oath

Many states require that arbitrators take an oath to faithfully hear and examine the matters in controversy and render a just award to the best of their understanding. In the absence of such laws, AAA Rules provide for the oath, unless waived by the parties.

At all times, arbitrators are expected to observe the standards which that oath and the Code of Ethics for Arbitrators impose. In signing an AAA Acceptance of Appointment form, they are required to certify that they have no interest, personal or otherwise, in the outcome.

Preparing for arbitration

By the time a case reaches arbitration, parties have generally spent many weeks, if not months, in discussing the grievance. In these discussions, they have become familiar with all the complications of the matter. The problem

then remains of communicating this understanding of the facts to the arbitrator who, as a rule, knows very little detail about the dispute until the hearing begins. Effective presentation of these facts and arguments should begin with thorough preparation for arbitration. The following steps are suggested:

1. Study the original statement of the grievance and review its history through every step of the grievance machinery.

2. Examine carefully the initiating paper to help determine the arbitrator's role. It might be found, for instance, that while the original grievance contains many elements, the arbitrator, under the contract, is restricted to resolving only certain aspects.

3. Review the collective bargaining agreement from beginning to end. Often, clauses which at first glance seem to be unrelated to the grievance will be found to have some bearing on it.

4. Assemble all documents and papers you will need at the hearing. Where feasible, make photostatic copies for the arbitrator and the other party. If some of the documents you need are in the possession of the other party, ask in advance that they be brought to the arbitration. Under some arbitration laws the arbitrator has the authority to subpoena documents and witnesses if they cannot be made available in any other way.

5. If you think it will be necessary for the arbitrator to visit the job site for on-the-spot investigation, make plans in advance. The arbitrator should be accompanied by representatives of both parties, and it may be helpful for the Tribunal Administrator to be present.

6. Interview all witnesses. Make certain they understand the whole case and particularly the importance of their own testimony within it.

7. Make a written summary of what each witness will testify to. This will be useful as a check-list at the hearing, to make certain nothing is overlooked.

8. Study the case from the other side's point of view. Be prepared to answer the opposing evidence and arguments.

9. Discuss your outline of the case with others in your organization.

A fresh viewpoint will often disclose weak spots or previously overlooked details.

10. Read as many articles and published awards as you can on the general subject matter in dispute. While awards by other arbitrators for other parties have no binding precedent value, they may help clarify the thinking of parties and arbitrators alike. The American Arbitration Association reports labor arbitration awards released by parties in a monthly publication, Arbitration in the Schools.

The arbitration hearing

The date for the hearing is fixed by the arbitrator after discussion with the Tribunal Administrator who has consulted the parties on this question. As on all other administrative matters, the function of the Tribunal Administrator is to handle details and arrangements in advance when either party wants a stenographic record of hearings.

After introduction of the arbitrator and swearing-in ceremonies (in some cases), the customary order of proceedings is as follows:

1. Opening statement by the initiating party, followed by a similar statement by the other side.

2. Presentation of evidence, witnesses and arguments by the initiating party.

3. Cross examination by the other party.

4. Presentation of evidence, witnesses and arguments by the defending party.

5. Cross-examination by the initiating party.

6. Summation by both parties, usually following the same order as in the opening statements.

This is the customary order. The arbitrator may vary this order, either on his own initiative or at the request of a party. In any case, the order in which the facts are presented does not imply that the "burden of proof" is

more on one side than the other, for both parties must try to convince the arbitrator of the justice of their positions.

Presenting your case

1. The Opening Statement. The opening statement should be prepared with utmost care, because it lays the groundwork for the testimony of witnesses and helps the arbitrator understand the relevance of oral and written evidence. The statement, although brief, should clearly identify the issue, indicate what is to be proved, and specify the relief sought.

The question of the appropriate remedy, if the arbitrator should find that a violation of the agreement did in fact take place, deserves careful attention at the outset. A request for relief should be specific. This does not necessarily mean that if back pay is demanded, for instance, it is essential for the complaining party to have computed an exact dollar-and-cents amount. But it does mean that the arbitrator's authority to grant appropriate relief under the contract should not be in doubt.

Because of the importance of the opening statement, some parties prefer to present it to the arbitrator in writing, with a copy given to the other side. They believe that it may be advantageous to make the initial statement a matter of permanent record. It is recommended, however, that the opening statement be made orally even when it is prepared in written form, for an oral presentation adds emphasis and gives persuasive force to one's position.

While opening statements are being made, parties are frequently able to stipulate facts about the contract and the circumstances which gave rise to the grievance. Giving the arbitrator all the uncontested facts early in the hearing saves time throughout, thereby reducing costs.

2. Presenting Documents. Documentary evidence is often an essential part of a labor arbitration case. Most important is the collective bargaining agreement itself, or the sections that have some bearing on the grievance. Documentary evidence may also include such material as records of settled grievances, jointly signed memorando of understanding, correspondence, official minutes of contract negotiation meetings, personnel records, medical

reports and wage data. Every piece of documentary evidence should be properly identified, with its authenticity established. This material should be physically presented to the arbitrator (with a copy made available to the other side), but an oral explanation of the significance of each document should not be omitted.

In many instances, key words, phrases and sections of written documents may be underlined or otherwise marked to focus the arbitrator's attention on the essential features of the case. Properly presented, documentary evidence can be most persuasive; it merits more than casual handling.

3. Examining witnesses. Each party should depend on the direct examination of his own witnesses for presentation of facts. After a witness is identified and qualified as an authority on the facts to which he will testify, he should be permitted to tell his story largely without interruption. Although leading questions may be permitted in arbitration, testimony is more effective when the witness relates facts in his own language and from his own knowledge. This does not mean, however, that questions from counsel may not be useful in emphasizing points already made or in returning a witness to the main line of his testimony.

4. Cross-Examining Witnesses. Every witness is subject to cross-examination. Among the purposes of such cross-examination are: disclosure of facts the witnesses may not have related in direct testimony; correction of misstatements; placing of facts in their true perspective; reconciling apparent contradictions; and attacking the reliability and credibility of witnesses. In planning cross-examination, the objective to be achieved should be kept in mind. Each witness may therefore be approached in a different manner, and there may be occasions when cross-examination will be waived.

5. Maintaining the Right Tone. The atmosphere of the hearing often reflects the relationship between the parties. While the chief purpose of the arbitration hearing is the determination of the particular grievance, a collateral purpose of improving that relationship may also be achieved by skillful and friendly conduct of the parties. Thus, a better general understanding between the parties may be a by-product of the arbitration. To this end, the parties should enter the hearing room with the intention of conducting themselves in an objective and dignified manner. The arbitration hearing should be informal

enough for effective communication, but without loss of that basic sense of order that is essential in every forum of adjudication.

The hearing is no place for emotional outbursts, long speeches with only vague relevancy to the issue, for bitter caustic remarks, or personal invective. Apart from their long-run adverse effect on the basic relationship between the parties, such immoderate tactics are unlikely to impress or persuade an arbitrator. Similarly, over-technical and over-legalistic approaches are not helpful.

A party has every right to object to evidence he considers irrelevant, as the arbitrator should not be burdened with a mass of material that has little or no bearing on the issue. But objections made merely for the sake of objecting often have an adverse effect, and they may give the arbitrator the impression that one simply fears to have the other side heard.

6. The Summary. Before the arbitrator closes the hearing, he will give both sides equal time for a closing statement. This is the occasion to summarize the factual situation and emphasize again the issue and the decision the arbitrator is asked to make.

As arbitration is a somewhat informal proceeding, arguments may be permitted to some extent during all phases of the hearing. There may be times, however, when the arbitrator will require parties to concentrate on presenting evidence and put off all arguments until the summary. In either event, all arguments should be stated fully.

Finally, as this will be the last chance to convince the arbitrator, the summary is the time to refute all arguments of the other side.

7. Post-Hearing Procedure. After both sides have had equal opportunity to present all their evidence, the arbitrator declares the hearing closed. Under AAA Rules, he has 30 days from that time within which to render his award, unless the collective bargaining agreement requires some other time limit. If parties want to file written post-hearing briefs, transcripts of records or other data, time limits are set and hearings remain open until those documents are received. As usual, exchange of post-hearing material takes place through the Tribunal Administrator; the parties do not communicate

directly with the arbitrator except when both sides are present. The Association will see that both briefs are transmitted to the arbitrator and that an interchange takes place between parties at the same time.

8. How to Reopen Hearings. When parties jointly agree to add certain data after a hearing is closed, they may arrange to do so by written stipulation filed with the Association. The arbitrator will then accept the new material and take it under advisement.

In the event new evidence is discovered, or when a situation arises that appears to require explanation, parties should not attempt to communicate directly with the arbitrator; they should request the arbitrator, through the AAA, to reopen proceedings and conduct an additional hearing or arrange for presentation of evidence through other means. The arbitrator may also reopen hearings on his own initiative when he deems it necessary.

Under the procedure of the American Aribtration Association, all contact between the parties and the arbitrator must be channeled through the Association. This eliminates the possibility of suspicion that one side may have offered arguments or evidence which the other had no opportunity to rebut.

Common errors in arbitration

1. Using arbitration and arbitration costs as a harassing technique.

2. Over-emphasis of the grievance by the union, or exaggeration of an employee's fault by management.

3. Reliance on a minimum of facts and a maximum of arguments.

4. Concealing essential facts; distorting the truth.

5. Holding back books, records and other supporting documents.

6. Tying up proceedings with legal technicalities.

7. Introducing witnesses who have not been properly instructed on demeanor and on the place of their testimony in the entire case.

8. Withholding full cooperation from the arbitrator.

9. Disregarding the ordinary rules of courtesy and decorum.

10. Becoming involved in arguments with the other side. The time to try to convince the other party is before arbitration, during grievance processing. At the arbitration hearing, all efforts should be concentrated on convincing the arbitrator.

Costs of arbitration

The following items involving costs should receive consideration in any arbitration proceeding. First, the preparation and presentation of the case; second, the stenographic report of the testimony (if desired); third, the arbitrator's fee; and fourth, the administrative expense.

1. The first expense is clearly within the control of each party. It includes the time and expenses of participants, the investigation of facts, and the preparation of exhibits. Briefs, if desired, constitute another substantial cost. In complex cases parties sometimes require the help of outside experts such as time-study engineers or economists. But this added expense is seldom necessary in the average grievance arbitration.

2. The second item of expense, the stenographic record, is a much debated item. As a general rule, arbitrators take their own notes and do not need stenographic records. In complicated cases, stenographic records are frequently found helpful not only by arbitrators, but also by parties in preparation of written briefs. When a party wants a stenographic record, the Association arranges to have a court reporter present at hearings. The party or parties ordering a record will be billed directly by the stenographer. It is therefore up to them to give him appropriate instructions with regard to copies and billing.

3. The third item of expense is the fee of the arbitrator. The charges made by an arbitrator usually range from $125 up per day of hearing and per day used in the preparation of the award. It is the Association's policy and practice to have the rate of compensation agreed upon or known in advance. Along with the arbitrator's fee there may be his travel, hotel and incidental costs.

4. The fourth item of expense is the fee of $50 which each party pays to the Association. For this sum, AAA performs all the administrative work in

connection with the selection of the arbitrator and the scheduling of hearings. The basic administrative fee also pays for the first hearing. An additional $25 is charged to each party for every subsequent hearing, if it is clerked by an AAA staff member or if it takes place in a room furnished by the Association.

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Examples of Grievance Arbitration Cases

School boards in general have had little experience with binding arbitration of grievances; however, this situation is changing rapidly. In order to be more alert to the potential dangers of binding arbitration, school boards should look at cases in jurisdictions where awards have been imposed. Following are a number of such cases:

Woonsocket, Rhode Island

In Rhode Island, the Woonsocket School Committee violated the terms of its contract with the Woonsocket Teachers Guild, AFT, when it failed to appoint Leo J. Allard, Jr., to the chairmanship of the high school English department, according to a decision of a board of arbitration.

The arbitrators, in a 2-1 verdict, ordered that Allard "be appointed to that position forthwith, and be made whole for the wages lost as a result of the School Committee's failure to appoint him on October 9, 1968."

The board based its ruling on the determination that "Mr. Allard, as the employee with the longest tenure in the Woonsocket school system, was entitled to the post of chairman of the English department."

The decision of the arbitrators is binding upon the School Committee, with no right of appeal, under terms of the contract with the teachers'guild. Appeal can be taken only on the ground that the decision was procured by fraud or

that it violates the law, in which case such appeal would be to the state Superior Court.

Robert T. Guertin, also a member of the high school's English department at the time, was the unanimous choice of the School Committee for the chairmanship, and he filled the position during the following school year.

Cornelius J. McAuliffe of Providence served as arbitrator for the guild; John G. Venditto of Warwick represented the School Committee, and William J. Fallon of Boston, a member of the American Aribtration Association, was the neutral arbitrator. Venditto, assistant superintendent in charge of personnel for the Warwick School Department, wrote a four-page dissenting opinion.

The teachers' union was represented by state Senator Julius Michaelson of Providence as its attorney. The school board did not retain counsel.

"The problem in this case is that the criteria set forth in section 7 (of the teachers' contract) - knowledge, ability, skill, efficiency, physical condition and general health, character and personality - were never utilized as that section states they must be used, as the basis for advancement, promotion or transfer within the school system," the arbitrators wrote.

"The superintendent, in most attractive innocence, considered all these factors as a group and he did not rate each candidate on each factor. He was thus put at great disadvantage in attempting to justify his conclusion that Mr. Guertin was the best candidate for the post. He relied on the members of the School Committee, and they, in turn relied on him.

"The board joins the guild in acknowledging the good faith and integrity of the superintendent and the School Committee members in concluding that Mr. Guertin was the best man, but unfortunately there has not been a scintilla of probative evidence introduced that lends support to this conclusion, which was apparently unanimously reached. As a matter of fact, so far as knowledge is concerned, it is quite apparent that Mr. Guertin did not have the qualifications of all the other applicants who had already earned their master's degrees before applying for the vacancy.

". . .The record reveals that all we received was the conclusion of the superintendent and the committee members that Mr. Guertin had more ability,

more skill and efficiency and rated higher in personality than the other candidates. However, not a single piece of evidence was introduced to support the conclusion that Mr. Guertin deserved a higher rating on any of these factors than any of the other candidates, nor that the other candidates deserved a lower rating than Mr. Guertin for some reason not revealed.

"It is the board's finding that in evaluating the various factors . . . the superintendent must utilize objective standards and be prepared to support the conclusions reached with the reasons which persuaded him to reach these conclusions."

The pertinent sections of the contract, the arbitrators continued, "contemplate that the superintendent will be fair and reasonable in his evaluation, and where the guild and a board of arbitration are not given the reasons behind the conclusions reached, it is impossible to sustain that conclusion as one which is justified by a fair preponderance of the credible evidence.

"The record contains no evidence which permits this board to conclude that Robert J. Guertin was more qualified for the position of chairman of the English department at Woonsocket High School than the grievant, Mr. Allard. The state of the record requires the finding that as of October 9, 1968, Mr. Allard and Mr. Guertin were equally qualified in respect to the factors listed in section 7 of article 10, and therefore Mr. Allard, as the employee with the longest tenure in the Woonsocket school system, was entitled to the post of chairman of the English department."

Departmental chairmen at Woonsocket High School were paid $700 additionally, and Allard, as a result of the arbitration decision, was to recover most or all of that amount.

Summing up the process, Mr. Allard filed a formal grievance with the executive board of the teachers' guild in late October 1968. The executive board met with the superintendent of schools in November and then moved into the third step of the grievance procedure by appealing to the School Committee in February 1969. A letter from the School Committee was received by the teacher unit on February 26, which noted that "the aggrieved has not shown due cause to substantiate the accusation that a violation of the existing contract was effected." The grievance was then processed through binding arbitration.

Clintondale, Michigan

A January 12, 1970, grievance filed by Clintondale, Michigan, department heads, who continued to perform their duties after notification in mid-October 1969 that their job classification and extra pay were being eliminated, was ruled timely by a Michigan arbitrator.

Determining that the grievance was a "continuing" one and, therefore, did not violate a contractual 20-day limit on filing grievances, the arbitrator directed the Clintondale Community Schools to pay the department heads for services rendered from 20 days prior to the filing of the grievance through the end of the 1969-1970 school year.

On October 14, 1969, the school administration notified department heads in writing that "due to financial problems, a need for reorganization and role definition, the supplemental classification of 'department head' will be eliminated for the remainder of this school year.

"Those persons who have served in this capacity will be reimbursed for time spent in this capacity through October 17, 1969.

"As soon as possible a meeting will be held with secondary [principals] and certain [Clintondale Education Association] CEA members and the assistant superintendent for the purpose of mapping the department head development program for the future."

Then on January 12, 1970, a CEA official filed a grievance claiming that the administration had violated the parties' September 4, 1969, contract by "arbitrarily and unilaterally and without consultation with the Association [removing] department heads from payroll status." In addition, he contended that "the contract states that department heads shall exist," that the position of department head "shall not be deleted," and that "department heads shall be reinstated and be given full pay per the Articles and Sections of the contract that apply."

Pointing to Article XXIV, Section E(1) of the contract which provided in part that "a complaint shall. . .within 20 days of the incidence of the alleged grievance be brought to the attention of the Administration," the school argued that since the "incidence" grieved occurred in October, the grievance was

untimely filed. The CEA, however, contended that the grievance was a continuing one, because the contract provided for both a specified salary differential for department heads and the maintenance of standards, i.e., maintenance of the department heads' positions.

In examining the parties' contract, the arbitrator found that it recognized the existence of the position of department head as a condition of employment, and specified compensation for that position at a stated percentage of salary. Moreover, the contract provided for the continuance of all conditions of employment at a level no lower than the highest minimum standards effective when the contract was signed, and held that the responsibilities of any bargaining unit position would not be altered without prior notification to the teacher. According to the arbitrator, use of the word "altered" indicates that elimination of a position was not covered by the pertinent contract clause.

The arbitrator thereby found that:

> The language of grievance supports the thesis that it is a continuing grievance as it refers to "payroll status". Payroll is a continuing thing. The complaint is not directed solely against the removal of the department heads as of October 17, 1969, but against their being continually kept off the payroll.
>
> In addition, the evidence is unrefuted that the department heads were requested by the high school and junior high school principals to perform as department heads and that they continued to do so from the time of the announced termination date.
>
> If there is a violation, the violation occurs each day that a department head is serving in that capacity and not being paid the 4% or 3% of base pay as required by . . . the contract. The situation differs from a single isolated completed transaction. . .
>
> Had the duties of the department heads been reassigned to the principals, or eliminated completely, there might be rationale for denying the grievance. But the duties of the department heads were not eliminated and were not reassigned. . . In addition to the act of the high school and junior high school principals who represented their employer, the Clintondale Community Schools, the language of the contract supports the CEA position that department heads are to be continued during the term of the contract.

While directing the school to pay department heads for duties performed from December 24, 1969,through the end of the school year, the arbitrator reserved jurisdiction in the event the parties were unable to determine the amount

entitled each grievant. (Clintondale Community Schools and Clintondale Education Association, May 22, 1970.)

Washington, D.C.

A public school teacher in Washington, D.C., lost her fight for a parking space on school property when Arbitrator Nathan Cayton found nothing in the collective bargaining agreement between the District of Columbia Board of Education and Washington Teachers' Union or in the school board's rules and regulations to support her case.

The grievance was pressed by a Negro teacher at Woodrow Wilson High School who contended that the policy of assigning parking spaces on the basis of building seniority is unfair because Wilson was, until 1967, an all-white school. Thus, building seniority reflects an unconstitutional teacher placement plan and is racially discriminatory, she contended.

The grievant pointed out that of 37 parking spaces on the school grounds, 33 were held by white teachers and only four by Negroes. Further, she argued, 15 of the white teachers holding spaces had less system-wide seniority than she had, and 14 of the 15 came to Wilson prior to 1967.

Allocation of parking spaces on D.C. school property is determined by the faculty of each school. Wilson teachers voted for the building seniority system, and when the grievant here first raised her complaint it was suggested by the principal (also a Negro) that she poll or petition the faculty for a change in the system. The grievant declined to take this approach, choosing instead to file her grievance.

The union did not associate itself with the grievance, as it could have done under the collective bargaining agreement. The grievant was represented by her personal counsel.

Arbitrator Cayton put the case into perspective by asking: "Should the Board of Education be required to overturn a parking assignment plan which satisfied all the teachers at Wilson, except one, and satisfied their union as well?"

Seniority, Cayton noted, is one of the tenets of labor-management relations. He said:

> In one form or another the principle of seniority has been employed in the drafting and administering of tens of thousands of bargaining agreements. It is universally recognized as a fair and proper guide or test in such matters as promotions, protection against layoffs, shift preferences, and vacation selections. It is not free of imperfections, and occasionally results in a seeming inequity. But in the long run it has been found to serve a useful and salutary purpose by giving priority in status or opportunity to employees with longer years of service.

Looking at the case before him, Cayton observed that the rule of seniority was not prescribed by the school board. "It was adopted many years ago by the democratic process of voting by Wilson faculty members themselves, and, as was testified without contradiction, it was reconfirmed by the faculty members between 1955 and 1967," he said.

Turning to the race discrimination issue, Cayton said:

> Careful consideration has been given to the argument of counsel for the grievant that the seniority system should be invalidated because it is the outgrowth of an unconstitutional teacher placement plan, and racially discriminatory. This argument is based on the fact that of the parking spaces now assigned, 33 are held by white teachers and only 4 by Negroes, and of the white teachers holding spaces, 15 have less system-wide seniority than Mrs. Woodson [the grievant], and 14 of these 15 came to Wilson prior to June 16, 1967, 'when Negroes such as Mrs. Woodson were being excluded.'
>
> These figures are indeed striking, but they do not establish that a discriminatory pattern was intended by the Board of Education, which, as we have seen, did not dictate or establish the building seniority system used at Wilson and six other senior high schools, as well as at some eight junior high schools. Nor is there any basis in the evidence for holding that there is a 'discriminatory pattern' in the system voted by the teachers themselves and approved over the years, and acquiesced in by all the teachers, of both races, except the grievant. It can surely not be called a scheme or tactic to perpetuate an objectionable system, since it has been and is open to them to change or abolish it by their votes. Indeed it was open to Mrs. Woodson to initiate such a move, and, as has already been stated, she was twice invited to do so, once by her principal and once by Mrs. Jackson [union representative], and she twice declined to do so, for the stated reason that she did not have the time.
>
> The charge that the Board has not moved properly to encourage transfers of teachers in order to correct racial imbalance is not a matter to be decided in this arbitration proceeding. But the uncontradicted testimony is that there has been no policy to discourage transfers to Wilson, and no teacher has been discouraged from transferring to Wilson because of the parking situation.

Cayton's award:

The assignment of parking spaces to teachers based on seniority at Woodrow Wilson High School has not been shown to be an unfair practice under existing laws or Board of Education rules and regulations, and the grievance by Ruby G. Woodson must be denied. (Woodson and District of Columbia Board of Education; AAA Case No. 14 30 0036 69M)

Westchester County, New York

The lack of a comma in the pertinent clause of a collective bargaining agreement and the State's Education Law, led the New York State Commissioner of Education to uphold the claim of a Westchester County school teacher that she is entitled to longevity pay based upon transfer credit for service rendered in another school district.

The appellant, Gertrude Ladd, was employed in September 1949, and during her fifth year of service was given three years of transfer credit for service elsewhere. She claimed she became entitled to longevity increment during the 1967-68 school year based both upon provisions of the Education Law with respect to transfer credit and the following provision of the 1967-68 collective bargaining agreement:

Any teacher who has attained twenty (20) years of active service, of which at least fifteen (15) shall have been on active tenure in this district, shall be paid at a rate of five hundred ($500.00) dollars per year in excess of the otherwise applicable rate. Teachers satisfying these requirements between September 1 and February 1 of any year shall receive only an additional two hundred fifty ($250.00) dollars for that year.

This clause was amended in the 1968-69 agreement by the insertion of a comma after the word "tenure" in the first sentence.

The Commissioner upheld Miss Ladd's claim on both grounds, saying, "I find that appellant is entitled to receive the sum of $250.00 for the school year 1967-68 and the sum of $500.00 for the school year 1968-69." He explains:

Prior to the insertion of the comma referred to above, there was no requirement that all of the twenty years of service be within the district. Appellant has established that she had attained over twenty years of service, over fifteen of which had been on tenure within the district, and that she therefore

meets the eligibility requirement of section 5 of the collective bargaining agreement.

Education Law section 3101, subdivision 4, defines the term 'transfer credit' to mean 'the credit given by the school authorities to a teacher for years of service outside the school district.' Education Law section 3102, subdivision 6, mandates inclusion of years for which transfer credit was given in any salary determination, and requires that these years be treated as 'year(s) of service in the district.' Notwithstanding the optional nature of the longevity increment, the statute clearly mandates parity between actual service within a school district and service rendered outside the school district, once transfer credit has been voluntarily granted.

(Matter of Gertrude Ladd and Board of Education of Central School District No. 3 of the Towns of Putnam Valley and Carmel, Putnam County; Cortlandt, Westchester County with respect to salary credit. New York State Education Department No. 8017, July 22, 1969.)

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Conclusion

Binding arbitration of alleged violations of negotiated agreements between school boards and teacher unions will increase. In this book we have tried to explain the nature of grievance procedures and the concepts of final resolution. Whether binding arbitration of grievances is in all instances legal, remains an unanswered question in all states. Undoubtedly, this will be a big issue for many years to come.

Despite the legal questions surrounding binding arbitration of grievances, school boards are well advised to enter into employee negotiations with an attitude that the agreement reached between the parties is binding, and that disputes arising from that agreement must be resolved impartially. Whether the school board can provide such impartiality to the satisfaction of the employees, state legislatures and courts remains to be seen. In the meantime, the demand for grievance arbitration will continue to be one of the more interesting and challenging issues in public sector bargaining.

Some final words of advice are now in order:

1. If you agree to arbitration of grievances (either binding or advisory) be sure your entire negotiated agreement is written in such a manner as to minimize misinterpretations by either party.

2. If you agree to grievance arbitration, be sure to get something in return. In the hands of a skilled school board negotiator, the school board can resolve many unresolved issues by granting binding arbitration, and maybe even get something which improves the school system.

3. If you agree to grievance arbitration, be sure that it is legal under your state's laws.

4. Try to negotiate grievance arbitration which is advisory to the board.

5. If binding arbitration is agreed to, try to make it final and binding only on disputes in the negotiated agreement which do not require board action to implement.

6. If you agree to arbitration of grievances, it is even more imperative that your school administrators be given a thorough orientation in contract administration.

Appendix

A Typical Grievance Procedure

Grievance procedures are inevitably a part of the teacher organization's proposals. Following is a typical sample of the type of proposal which is made. This procedure is not necessarily encouraged or discouraged. It is presented here for study purposes. The reader should evaluate this proposal procedure in light of the many suggestions made elsewhere in this book.

GRIEVANCE PROCEDURE

A. DEFINITIONS

1. A "grievance" shall mean a complaint by a teacher or the Association -

a. That there has been as to him or it a violation or inequitable application of any of the provisions of this contract, or

b. That he or it has been treated inequitably by reason of any act or condition which is contrary to established School Board policy or practice governing or affecting employees, except that the term "grievance" shall not apply to any matter as to which the School Board is without authority to act.

2. An "aggrieved" is the person or persons making the complaint.

3. A "party in interest" is the person or persons making the complaint and any person who might be required to take action or against whom action might be taken in order to resolve the complaint.

4. The term "days" when used in this article shall, except where otherwise indicated, mean working school days; thus, a week-end or vacation days are excluded.

B. GENERAL PROCEDURES

1. Since it is important that grievances be processed as rapidly as possible, the number of days indicated at each level should be considered a maximum, and every effort should be made to expedite the process.

2. In the event a grievance is filed on or after June 1st, which if left unresolved until the beginning of the following school year, could result in irreparable harm to a party in interest, the parties agree to make a good faith effort to reduce the time limits set forth herein so that the grievance procedure may be exhausted prior to the end of the school term or as soon thereafter as is practicable.

3. In the event a grievance is filed so that sufficient time, as stipulated under all levels of the procedure, cannot be provided before the last day of the school year, should it be necessary to pursue the grievance to all levels of the appeals, then said grievance shall be resolved in the new school term in September under the terms of this agreement and this article and not under the succeeding agreement.

4. Association Representation. Upon selection and certification by the Association, the Board shall recognize a grievance representative who is elected by the Association members in each building and an Association grievance committee. Duties of the building grievance representative will include

listening to possible grievance situations brought to him by teachers in his building and representing or accompanying the aggrieved at Level One.

5. At all levels of a grievance after it has been formally presented, at least one member of the Association Grievance Committee shall attend any meetings, hearings, appeals, or other proceedings required to process the grievance.

C. INITIATION AND PROCESSING

1. Level One

a. A teacher with a grievance will first discuss it with his principal or immediate superior (see 6f if principal is not immediate superior), either individually or through the Association's school grievance representative, or accompanied by the representative, with the objective of resolving the matter informally.

b. If the teacher is not satisfied with the disposition of his grievance, he may file a written grievance with his principal within ten (10) days following the act or condition which is the basis of his complaint. Information copies are to be sent by the aggrieved party to the representative of the Association and to the Superintendent. The principal shall communicate his decision in writing within five (5) days to the grievant and to all persons present at the hearing and to the area director.

2. Level Two

a. Within five (5) days of receipt of a decision rendered by the principal the decision of the principal in regard to such appeal may be further appealed to the area director. The appeal shall include a copy of the decision being appealed and the grounds for regarding the decision as incorrect. It shall also state the names of all persons officially present at the prior hearing and such persons shall receive a copy of the appeal.

b. Appeals to the area director shall be heard by the area director within ten (10) days of his receipt of the appeal. Written notice of the time and place of hearing shall be given five (5) days prior thereto to the aggrieved employee, his representative if any, the Association grievance representative, the chairman of the grievance committee, and any administrator who has theretofore been involved in the grievance.

c. Within five (5) days of hearing the appeal, the area director shall communicate to the aggrieved employee and all other parties officially present at the hearing, his written decision, which shall include supporting reasons therefore. A copy of the decision shall be sent to the chairman of the Grievance Committee.

3. Level Three

a. Within five (5) days of receipt of the decision rendered by the area director, the decision of the area director in regard to such appeal may be further appealed to the Superintendent. The appeal shall include a copy of the decision being appealed and the grounds for regarding the decision as

incorrect. It shall also state the names of all persons officially present at the prior hearing, and such persons shall receive a copy of the appeal.

b. Appeals to the Superintendent shall be heard by the Superintendent within fifteen (15) days of his receipt of the appeal. Written notice of the time and place of hearing shall be given five (5) days prior thereto to the aggrieved employee, his representative if any, the Association grievance representative, the chairman of the grievance committee, and any administrator who has theretofore been involved in the grievance.

c. Within ten (10) days of hearing the appeal the Superintendent of schools shall communicate to the aggrieved employee, and all other parties officially present at the hearing, his written decision, which shall include supporting reasons therefore. A copy of the decision shall be sent to the chairman of the grievance committee.

4. Initiation of Group Grievances

a. Where members of the negotiating unit in more than one school have a grievance, the chairman of the grievance committee, in the name of the Association on their request, may initiate a group grievance in their behalf. In such a case, a written grievance may be filed originally with the Superintendent, and information copies of the grievance shall be sent simultaneously to the principal or principals of the employees involved.

b. The Association shall have the right to initiate a grievance growing out of an alleged violation of Association rights under this contract. Any such grievance shall be initiated by filing the written grievance in the first instance with the Superintendent. Appeals to the Superintendent or grievances filed originally with him under this article shall be heard by the Superintendent within fifteen (15) days of the receipt by him of the appeal or grievance. Written notice of the time and place of hearing shall be given five (5) days prior thereto to the chairman of the grievance committee and any administrator involved in the grievance. The Superintendent shall render his decision in writing within ten (10) days after concluding the hearing.

5. Arbitration

a. A grievance dispute which is not resolved at the level of the Superintendent under the grievance procedures herein may be submitted by the Association as specified herein to an arbitrator for decision if it involves the application or interpretation of this agreement; except a grievance concerning any term of this agreement involving School Board discretion or Board policy may be submitted to an arbitrator for decision only if it is based on a complaint that such discretion or policy was applied discriminatorily, i.e., that it was applied in a manner unreasonably inconsistent with the general practice followed throughout the school system in similar circumstances.

b. The proceeding shall be initiated by filing with the Superintendent and the American Aribtration Association a notice of arbitration. The notice shall be filed within ten (10) days after receipt of the decision of the Superintendent of Schools under the grievance procedure, or, where no decision has been issued in the circumstances described above, three (3) days following the expiration of the fifteen (15) day period provided above under 3b and 4b.

The notice shall include a statement setting forth precisely the issue to be decided by the arbitrator and the specific provision of the agreement involved.

c. Within ten (10) days after such written notice of submission to arbitration, the Superintendent and the Association will agree upon a mutually acceptable arbitrator and will obtain a commitment from said arbitrator to serve. If the parties are unable to agree upon an arbitrator or to obtain such a commitment within the specified period, a request for a list of arbitrators shall be made to the American Arbitration Association by either party. The Board and the Association shall use a striking-off procedure for choosing an arbitrator from the American Arbitration Association list.

d. The parties will be bound by the voluntary labor arbitration rules of the American Arbitration Association regardless of how the arbitrator is selected; except that neither the Board nor the Association nor any grievant shall be permitted to assert any ground in arbitration if such ground was not disclosed to the other parties in interest prior to the decision being appealed to the arbitrator, or to assert any evidence known but not disclosed prior to the decisions being appealed.

e. The arbitrator shall limit his decisions strictly to the application and interpretation of the provisions of this agreement, and it shall be binding upon all parties involved.

f. The written award of the arbitrator shall be transmitted within ten (10) days of the decision to the Board, the Executive Board of the Association, and the aggrieved employee.

g. The costs for the services of the arbitrator will be borne by the Board.

6. General Provisions

a. No reprisals of any kind will be taken by the Board of Education or by any member of the administration against any party in interest, any school representative, any member of the grievance committee, or any other participant in the grievance procedure by reasons of such participation.

b. The filing or pendancy of any grievance under the provisions of this article shall in no way operate to impede, delay, or interfere with the right of the Board to take the action complained of, subject, however, to the final decision on the grievance.

c. Any party in interest may be represented at all stages of the grievance procedure except arbitration by a person of his own choosing, except that he may not be represented by a representative or an officer of any competing teacher organization. When a teacher is not represented by the Association, the Association shall have the right to be present and to state its views at all stages.

d. Failure at any step of this procedure to communicate the decision in writing on a grievance within the specified time limits shall permit the grievant to proceed to the next step. Failure at any step of this procedure to appeal agreements to the next step within the specified time limits shall be deemed to be acceptance of the decision rendered at that step.

e. Any grievance based upon an event or a condition which is not under the jurisdiction of an immediate superior shall be presented to the appropriate administrative authority.

f. All documents, communications and records dealing with the processing of a grievance will be filed separately from the personnel files of the participants.

g. Forms for processing grievances will be jointly prepared by the Superintendent and the Association. The forms will be printed by the Board and given appropriate distribution by the parties so as to facilitate operation of the grievance procedure.

h. If any member of the Association Grievance Committee is a party in interest to any grievance, he shall not serve as the Association's Grievance representative in the processing of such grievance.

i. The Board and its administrators will cooperate with the Association in its investigation of any grievance, and, further, will furnish the Association with such information as is requested for the processing of any grievance.

7. Additional General Provisions

a. Nothing contained in this article or elsewhere in this agreement shall be construed to prevent any individual employee from presenting and processing a grievance and having it adjusted without intervention or representation by the Association. If the adjustment is not inconsistent with the terms of this agreement; except that no grievance may be submitted to arbitration without the consent of, and representation by, the Association.

b. The sole remedy available to any teacher for any alleged breach of this agreement or any alleged violation of his rights hereunder will be pursuant to the grievance procedure; provided, however, that if a teacher elects to pursue any legal or statutory remedy for any alleged breach of this agreement or any alleged violation of his rights thereunder, such election will bar any further or subsequent proceeding for relief under the provisions of this article. Recourse by teacher to the grievance procedure shall constitute a waiver of any legal or statutory rights to relief for the condition which is the subject of the grievance.

c. In the course of investigation of any grievance, representatives of the Association will report to the principal of the building being visited and will state the purpose of the visit immediately upon arrival.

d. Every effort will be made by all parties to avoid interruptions of classroom activities and to avoid the involvement of students in all phases of the grievance procedure.

e. It will be the practice of all parties in interest to process grievances after the regular work day or at other times which do not interfere with assigned duties; provided, however, that upon mutual agreement by the aggrieved person, the Association, and the Board to hold proceedings during regular working hours, the grievant and the appropriate Association representative will be released from assigned duties without loss of salary. The Association shall have the right to designate one teacher as its grievance chairman and the committee shall not pre-empt more than ten (10) days a year from the teaching schedule of the chairman.

f. The Association agrees that it will not bring or continue and that it will not represent any employee in any grievance which is substantially similar to a grievance denied by the decision of an arbitrator; and the Board agrees

that it will apply to all substantially similar situations the decision of an arbitrator sustaining a grievance.

g. Each grievance shall have to be initiated within five (5) days of the occurrence of the cause for complaint, or, if neither the aggrieved nor the Association had knowledge of said occurrence at the time of its happening, then within five (5) days of the first such knowledge by either the aggrieved or the Association. Appropriately posted in dated school board notices relating to rules and regulations, also sent by registered mail to the President of the Association, shall be considered as binding the Association and all members of the negotiating unit with knowledge of the subject matter related in said notices.